Supreme Court, U.S.
FILED
AUG 1 1985
JOSEPH F. SPANIOL, JR.
CLERK

No. 84-1704, No. 84-1700, and No. 84-1640

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

MARSHALL MECHANIK, Petitioner
v
UNITED STATES OF AMERICA, Respondent

JEROME OTTO LILL, Petitioner
v
UNITED STATES OF AMERICA, Respondent

UNITED STATES OF AMERICA, Petitioner
v
MARSHALL MECHANIK, ET AL, Respondent

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

JOINT APPENDIX

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PETITIONS FOR CERTIORARI FILED April 29, 1985
April 30, 1985 and April 17, 1985
CERTIORARI GRANTED JUNE 17, 1985

BEST AVAILABLE COPY

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Every item appearing in this Joint Appendix involved the United States District Court for the Southern District of West Virginia.

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NOTE: The reported decisions of the Court of Appeals and the District Court were reproduced and appended to each Petition for Writ of Certiorari

Relevant Docket Entries — Jerome Otto Lill

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

U.S. vs.

LILL, JEROME OTTO

79 20056 03
Yr. Docket No. Def.

Date	Proceedings (Document No.)	V. Excludable Delay
8-10-79 (1)	FILED, INDICTMENT	
8-13-79 (2)	Filed, Govt.'s notice of motion and motion for consolidation of this case and 79-20045.	
8-17-79 (3)	ORDER, consolidating this case and 79-20045 for purpose of trial; deft.'s pretrial motions due by 8-24-79; Govt. to respond by 8-31-79.	
8-17-79 (4)	ARRAIGNMENT ORDER; def. stood mute and Court entered plea of NOT GUILTY to Counts 1, 2, 3, and 4 of the within 12-count indictment; case set for trial on 9-24-79; deft.'s motions due by 8-24-79; Govt. to respond by 8-31-79; motions for transfer pursuant to Rule 21(b) FRCrP must be filed within 10 days from this date; hearing on pre-trial motions set for 9-4-79 at 9:30 a.m.; deft.'s bond heretofore executed in 79-20045-03 in the amount of $125,000.00 on 7-16-	

79 shall continue from the 79-20045-03 case; deft. and counsel agreed that the stipulation order re: discovery materials which was filed in 79-20045-03 shall continue; deft. to advise Govt. in writing by 8-24-79 of which of the pretrial motions filed in 79-20045-03 he wishes to adopt in this case.

Date	Proceedings (Document No.)	V. Excludable Delay
8-28-79 (6)	Filed, Defendant's motion to join in motions of other defend ants; reaffirms all motions here-tofore made for deft.; proposed order to adopt and join in motions of other defendants attached.	2-8-28-79 E 8-30-79
8-30-79 (8)	Filed, Government's responses to similar pretrial motions of the defendants.	
3-60-80 (28)	Filed, defendant's motin for dismissal.	
3-14-80 (34)	ORDER, denying defendant's motion to dismiss indictment on grounds of alleged violation of Rule 6(d) FRCrP; denying defendant's motion for a stay of trial.	
4-4-80 (41)	ORDER, Grand Jury transcripts to be filed and sealed with Clerk.	
4-4-80	See CR 79-20045-03 for sealed grand jury transcripts.	

4-4-80 Mailed record on appeal to Court of Appeals (Appeal No. 80-5039)

4-29-80 (49) ORDER, case assigned to Judge Copenhaver; trial to continue on 5-12-80 at 9:30 a.m.

5-22-80 (63) Filed, Deft.'s notice of motion for rehearing.

7-7-80 (73) ORDER; case on trial on Feb. 19-22, March 5-7, March 10-14, March 20 and 21, March 24-28, April 7-11, April 17, April 23-25, May 21-23, May 27-30, June 2-4, June 6; June 9-12, June 17-21, and June 23-27, 1980; jury returned a verdict of GUILTY as to Counts 1, 2, and 4; adjudged that deft. is guilty and stands convicted; Probation Dept. to make PSI and report to the Court thereon; deft. to be sentenced on 8-6-80 at 1:00 p.m.; denying Govt.'s motion to revoke deft.'s bond pending sentencing; bond shall continue.

6-27-80 (74) Filed, jury verdict of GUILTY as to Counts 1, 2 and 4 of this indictment.

8-15-80 (81) MEMORANDUM ORDER; denying deft.'s motions to dismiss indictment by reason of the Rule 6(d) violation.

8-15-80 (82) JUDGMENT ORDER from proceedings on 8-6-80; deft. committed for 5 yrs impr plus a special parole term of 2 years as to each of Counts 2 and 4; As

to Count 1, deft imprisoned for 5 years; to run concurrently for a TOTAL COMMITMENT PERIOD of 5 years and a TOTAL SPECIAL PAROLE TERM of 2 years; Deft. is fined $10,000.00 as to each of Counts 1, 2 and 4, said fines to be inclusive of one another for an aggregate fine of $10,000.00

Relevant Docket Entries — Marshall Mechanik

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

U.S. vs.

MECHANIK, MARSHALL
a/k/a Michael Patrick Flanagan

79 20056 11
Yr. Docket No. Def.

Date	Proceedings (Document No.)	V. Excludable Delay
8-10-79 (1)	FILED, INDICTMENT	
8-13-79 (2)	Filed, Government's notice of motion and motion for consolidation of this case and 79-20045.	
8-13-79 (3)	ORDER, consolidating this case and 79-20045 for purpose of trial; deft.'s pretrial motions due by 8-24-79; Govt. to respond by 8-31-79.	
8-17-79 (4)	ARRAIGNMENT ORDER; def. entered plea of NOT GUILTY to Counts 1 and 10 of the within indictment; case set for trial on 9-24-79; deft.'s pretrial motions due by 8-24-79; Govt. to respond by 8-31-79; motions for transfer pursuant to Rule 21(b) FRCrP must be filed within 10 days from this date; hearing on pretrial motions shall be 9-4-79 at 9:30 a.m.; bond heretofore executed on 6-20-79 in the amount	

of $175,000.00 in 79-20045-07 shall continue in this case; deft. and counsel agreed that waiver of right to be present at pretrial hearings filed in 79-20045-07 shall continue in this case; deft. and counsel agreed that stipulation/order re: discovery materials filed in 79-20045-07 shall continue in this case; deft. to advise Govt. in writing by 8-24-79 of which of the pretrial motions filed in 79-20045-07 he wishes to adopt in this case.

Date	Proceedings (Document No.)	V. Excludable Delay
8-30-79 (6)	Filed, Government's responses to similar pretrial motions of the defendants.	
2-13-80 (20)	Filed, Deft.'s notice of motion for an Order requiring the Govt. to disclose the testimony of DEA Agent Randy James before the Grand Jury in support of either the first or superceding indictment.	
2-13-80 (22)	Filed, Deft.'s notice of motion for on Order requiring the Govt. to provide defts. with all of the Grand Jury testimony.	
3-6-80 (26)	Filed, Defendant's motion for dismissal.	
3-14-80(28)	ORDER, denying deft.'s motion to dismiss indictment on grounds of alleged violation of Rule 6(d) FRCrP; denying deft.'s motion for a stay of trial.	

4-4-80 (35) ORDER; Grand Jury transcripts to be filed and sealed with Clerk.

4-4-80 See CR 79-20045-03 for grand jury transcripts. (Sealed)

Mailed record on appeal to 4th Circuit (Appeal No. 80-5039)

4-29-80 (41) ORDER, case assigned to Judge Copenhaver; trial to continue to 5-12-80 at 9:30 a.m.

4-29-80 CASE ASSIGNED TO JUDGE COPENHAVER.

5-22-80 (54) Filed, Deft.'s notice of motion for rehearing.

7-7-80 (60) ORDER; case on trial on Feb. 19-22, March 5-7, March 10-14, March 20 and 21, March 24-28, April 7-11, April 17, April 23-25, aaMay 21-23, May 27-30, June 2-4, June 6; June 9-12, June 17-21, and June 23-27, 1980; jury returned a verdict of GUILTY as to Counts 1 and 10 of this indictment; adjudged that deft. is guilty and stands convicted; Probation Dept. to make PSI and report to the Court thereon; deft. to be sentenced on 8-6-80 at 2:00 p.m.; denying Govt.'s motion for revoking deft.'s bond pending sentencing; bond to continue.

6-27-80 (61) Filed, jury verdict of GUILTY as to Counts 1 and 10 of indictment.

8-15-80 (73) MEMORANDUM ORDER; denying deft.'s motions to dismiss indictment by reason of the Rule 6(d) violation.

8-15-80 (74) JUDGMENT ORDER, (from proceedings on 8-6-80); deft. committed for 5 years impr. as to each of Counts 1 to 10, to run concurrently for a TOTAL COMMITMENT PERIOD OF 5 YEARS; deft. fined $10,000.00 as to each of Counts 1 and 10, said fines to be inclusive of one another for an aggregate fine of $10,000.00

Indictment

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
JUNE 12, 1979 SESSION, GRAND JURY NO. TWO
CHARLESTON

UNITED STATES OF AMERICA

v.

BRECK DANA ANDERSON
DAVID THOMAS SEESING
JEROME OTTO LILL
GREGORY LOUIS MCCAFFERTY
MARK DOUGLAS CHADWICK
SHAHBAZ SHANE ZARINTASH
MARSHALL MECHANIK
also known as
Michael Patrick Flanagan
LEON JACQUES GAST
STEVEN HENRY RIDDLE

CRIMINAL NO. 79-20045
18 U.S.C. § 371
21 U.S.C. § 952(a)
21 U.S.C. § 841(a)(1)
18 U.S.C. § 1952(a)(3)
18 U.S.C. § 2

The Grand Jury Charges:

FIRST COUNT

1. That for an unknown period of time up to and including the 6th day of June, 1979, at Charleston, Kanawha County, West Virginia, and within the Southern Distsrict of West Virginia, and elsewhere, BRECK DANA ANDERSON, DAVID THOMAS SEESING, JEROME OTTO LILL, GREGORY LOUIS MCCAFFERTY, MARK DOUGLAS CHADWICK, SHAHBAZ SHANE ZARINTASH, MARSHALL MECHANIK, also known as Michael Patrick Flanagan, LEON JACQUES GAST and

STEVEN HENRY RIDDLE, the defendants, did wilfully and knowingly combine, conspire, confederate and agree together and with each other and with divers other persons, whose names are to the grand jury unknown, to commit offenses against the United States, that is:

a. To unlawfully, knowingly, intentionally and without authority possess with intent to distribute a controlled substance, in violation of Title 21, United States Code, Section 841(a)(1);

b. To travel in interstate and foreign commerce with intent to promote, manage, establish, carry on, and facilitate the promotion, management, establishment and carrying on of an unlawful activity, that is, a business enterprise involving a controlled substance, in violation of Title 18, United States Code, Section 1952(a)(3);

c. To import into the customs territory of the United States from a place outside thereof a Schedule I controlled substance, in violation of Title 21, United States Code, Section 952(a); and

d. To corruptly influence, obstruct and impede, and endeavor to influence, obstruct and impede the due administration of justice, in violation of Title 18, United States Code, Section 1503.

2. It was part of this conspiracy that defendants BRECK DANA ANDERSON, DAVID THOMAS SEESING, JEROME OTTO LILL, and GREGORY LOUIS MCCAFFERTY would and did travel in interstate and foreign commerce, via a DC-6 aircraft, from points outside the United States to a point within the United States, that is, Charleston, Kanawha County, West Virginia, by following a flight plan that included San Marcos in Guatemala, Kingston in Jamaica, Inagua in the Bahama Islands, Fayetteville and Greensboro in the State of North Carolina, and Pulaski in the State of Virginia.

3. It was further part of this conspiracy that the aforesaid DC-6 aircraft would and did carry as contraband cargo approximately 20,000 pounds of marihuana, a Schedule I non-narcotic controlled substance.

4. It was further part of this conspiracy that at approximately 12:53 a.m. on the 6th day of June, 1979, defendants BRECK DANA ANDERSON, DAVID THOMAS SEESING, JEROME OTTO LILL and GREGORY LOUIS MCCAFFERTY would and did land and attempt to land the aforesaid DC-6 aircraft at the Kanawha County Airport near Charleston, West Virginia.

5. It was further part of this conspiracy that defendants SHAHBAZ SHANE ZARINTASH, MARSHALL MECHANIK, also known as Michael Patrick Flanagan, LEON JACQUES GAST and STEVEN HENRY RIDDLE would and did travel in interstate commerce from points outside the State of West Virginia to the Kanawha County Airport near Charleston, West Virginia, with intent to meet the aforesaid DC-6 aircraft and receive the contraband cargo which it carried.

6. It was futher part of this conspiracy that defendant MARK DOUGLAS CHADWICK, acting under color of his office as deputy sheriff of Kanawha County, would and did arrange with his close friend, defendant SHAHBAZ SHANE ZARINTASH, to provide a safe and secure place to land the aforesaid DC-6 aircraft at the Kanawha County Airport near Charleston, West Virginia.

7. It was further part of this conspiracy that defendants MARK DOUGLAS CHADWICK, SHAHBAZ SHANE ZARINTASH, MARSHALL MECHANIK, also known as Michael Patrick Flanagan, LEON JACQUES GAST and STEVEN HENRY RIDDLE would be and were at the Kanawha County Airport near Charleston, West Virginia, in the early morning hours of the 6th of June, 1979, to meet the aforesaid DC-6 aircraft and receive the contraband cargo which it carried.

8. It was further part of this conspiracy that, after the aforesaid DC-6 aircraft attempted to land and crashed, defendant MARK DOUGLAS CHADWICK would and did aid and assist the flight of defendants SHAHBAZ SHANE ZARINTASH, MARSHALL MECHANIK, also known as Michael Patrick Flanagan, LEON JACQUES GAST, STEVEN HENRY RIDDLE and unknown others, who were riding in two Ryder rental trucks from the premises of the Kanawha County airport.

OVERT ACTS

9. In order to further the objects and purposes of the aforesaid conspiracy, the defendants and coconspirators did commit the following and other overt acts:

a. On or about the 4th day of June, 1979, defendant MARSHALL MECHANIK, also known as Michael Flanagan, rented a Ryder rental truck near Spartanburg, South Carolina;

b On the 5th and 6th days of June, 1979, defendants BRECK DANA ANDERSON and DAVID THOMAS SEESING piloted the aforesaid DC-6 aircraft, containing defendants JEROME OTTO LILL and GREGORY LOUIS MCCAFFERTY and approximately ten tons of marihuana, from outside the United States to the Kanawha County Airport;

c. At approximately 12:30 a.m. on June 6, 1979, defendant MARK DOUGLAS CHADWICK traveled to the Eagle Aviation terminal at Kanawha County Airport

d. At approximately 12:30 a.m. on June 6, 1979, defendants SHAHBAZ SHANE ZARINTASH, MARSHALL MECHANIK, also known as Michael Patrick Flanagan, LEON JACQUES GAST, STEVEN HENRY RIDDLE and unknown others traveled to the General Aviation Area of the Kanawha County Airport in two Ryder rental trucks to meet the aforesaid DC-6 aircraft nad receive its contraband cargo;

e. At approximately 12:40 a.m. on June 6, 1979, defendant MARK DOUGLAS CHADWICK had a conversation with defendant SHAHBAZ SHANE ZARINTASH;

f. On June 6, 1979, at the General Aviation Area of the Kanawha County Airport, defendant SHAHBAZ SHANE ZARINTASH possessed and utilized radio equipment for the purpose of communicating from the ground to airborne aircraft;

g. On June 6, 1979, at Kanawha County Airport, defendant MARK DOUGLAS CHADWICK possessed a hand-held communication unit or scanner;

h. At approximately 12:50 a.m. on June 6, 1979, defendants BRECK DANA ANDERSON and DAVID THOMAS SEESING requested the control tower at Kanawha County Airport to provide landing instructions to the aforesaid DC-6 aircraft;

i. At approximately 12:53 a.m. on June 6, 1979, the aforesaid DC-6 aircraft attempted to land at Kanawha County Airport;

j. At approximately 1:05 a.m. on June 6, 1979, defendant MARK DOUGLAS CHADWICK advised the defendants and unknown others in the aforesaid Ryder rental trucks that their plane had crashed and that their cargo was all over the hillside;

k. At approximately 1:05 a.m. on June 6, 1979, defendant MARK DOUGLAS CHADWICK aided the flight of the defendants and unknown others in the aforesaid Ryder rental trucks from the premises of the Kanawha County Airport;

l. At approximately 1:10 a.m. on June 6, 1979, defendant MARK DOUGLAS CHADWICK falsely advised the Kanawha County Sheriff's Department and its personnel that he was on Greenbrier street and proceeding to the airport when in fact he was then present at the Kanawha County Airport;

m. From approximately 12:53 a.m. until approximately 2:07 a.m. on June 6, 1979, defendant MARK DOUGLAS CHADWICK intentionally withheld from law enforcement authorities his knowledge of the presence and flight of the two Ryder rental trucks and their occupants from the Kanawha County Airport;

n. At approximately 2:07 a.m. on June 6, 1979, defendant MARK DOUGLAS CHADWICK falsely

advised the Kanawha County Sheriff's Department and its representatives that he had observed one Ryder truck containing one white male; and

o. Other overt acts.

ALL IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTION 371.

SECOND COUNT

On or about the 6th day of June, 1979, at the Kanawha County Airport, near Charleston, Kanawha County, West Virginia, and within the Southern District of West Virginia, defendants BRECK DANA ANDERSON, DAVID THOMAS SEESING, JEROME OTTO LILL and GREGORY LOUIS MCCAFFERTY, aided and abetted by each other, did unlawfully import into the United States from a place outside thereof approximately 20,000 pounds of marihuana, a Schedule I non-narcotic controlled substance as defined in Title 21, Code of Federal Regulations, Section 1308.11(d)(13); in violation of Title 21, United States Code, section 952(a) and Title 18, United States Code, Section 2.

THIRD COUNT

On or about the 5th and 6th days of June, 1979, defendants BRECK DANA ANDERSON, DAVID THOMAS SEESING, JEROME OTTO LILL, and GREGORY LOUIS MCCAFFERTY, aided and abetted by each other, did travel in interstate and foreign commerce from points outside the State of West Virginia and the United States of America to the Kanawha County Airport, near Charleston, Kanawha County, West Virginia, and within the Southern District of West Virginia, with intent to promote, manage, establish, carry on and facilitate the promotion management, establishment and carrying on of an unlawful activity,

that is, a business enterprise involving marihuana, a Schedule I non-narcotic controlled substance, and did thereafter perform, attempt to perform, and cause to be performed acts to promote, manage, establish, and carry on said unlawful activity; in violation of Title 18, United States Code, Sections 1952(a)(3) and 2.

FOURTH COUNT

On or about the 6th day of June, 1979, at Kanawha County Airport, near Charleston, Kanawha County, West Virginia, and within the Southern District of West Virginia, defendants BRECK DANA ANDERSON, DAVID THOMAS SEESING, JEROME OTTO LILL and GREGORY LOUIS MCCAFFERTY, aided and abetted by each other, did unlawfully, knowingly, intentionally and without authority possess with intent to distribute a controlled substance, that is, approximately 20,000 pounds of marihuana, a Schedule I non-narcotic controlled substance as defined by Title 21, Code of Federal Regulations, Section 1308.11(d)(13); in violation of Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code, Section 2.

FIFTH COUNT

On or before the 5th day of June, 1979, defendant SHAHBAZ SHANE ZARINTASH did travel in interstate commerce from points outside the State of West Virginia, including New York City, New York, to the Kanawha County Airport, near Charleston, Kanawha County, West Virginia, and within the Southern District of West Virginia, to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity, that is, a business enterprise involving marihuana, a Schedule I non-narcotic controlled substance, and did thereafter perform, attempt to perform, and cause to be performed acts to promote, manage, establish, and carry on said unlawful activity; in violation of Title 18, United States Code, Section 1952(a)(3).

SIXTH COUNT

On or about the 4th day of June, 1979, defendant MARSHALL MECHANIK, also known as Michael Patrick Flanagan, did travel in interstate commerce from at or near Spartanburg, South Carolina, to the Kanawha County Airport, near Charleston, Kanawha County, West Virginia, and within the Southern District of West Virginia, with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity, that is, a business enterprise involving marihuana, a Schedule I non-narcotic controlled substance, and did thereafter perform, attempt to perform, and cause to be performed acts to promote, manage, establish, and carry on said unlawful activity; in violation of Title 18, United States Code, Section 1952(a)(3).

SEVENTH COUNT

On or before the 5th day of June, 1979, defendant LEON JACQUES GAST did travel in interstate commerce from points outside the State of West Virginia, including New York City, New York, to the Kanawha County Airport, near Charleston, Kanawha County, West Virginia, and within the Southern District of West Virginia, with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity, that is, a business enterprise involving marihuana, a Schedule I non-narcotic controlled substance, and did thereafter perform, attempt to perform and cause to be performed acts to promote, manage, establish, and carry on said unlawful activity; in violation of Title 18, United States Code, Section 1952(a)(3).

EIGHTH COUNT

On or before the 5th day of June, 1979, defendant STEVEN HENRY RIDDLE did travel in interstate commerce from points outside the State of West Virginia,

including Taylorsville, Kentucky, to the Kanawha County Airport, near Charleston, Kanawha County, West Virginia, and within the Southern District of West Virginia, with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity, that is, business enterprise involving marihuana, a Schedule I non-narcotic controlled substance, and did thereafter perform, attempt to perform, and cause to be performed acts to promote, manage, establish, and carry on said unlawful activity; in violation of Title 18, United States Code, Section 1952(a)(3).

A True Bill.

Foreman

ROBERT B. KING
United States Attorney

Superseding Indictment

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
AUGUST 9, 1979 SESSION, GRAND JURY NO. TWO
CHARLESTON

UNITED STATES OF AMERICA

v.

BRECK DANA ANDERSON
DAVID THOMAS SEESING
JEROME OTTO LILL
MARK DOUGLAS CHADWICK
JAMES F. CHADWICK
CRAIG BRUCE MGGILVRAY
RUSSELL KOOK, also known
as Russell cook
GREGORY LOUIS MCCAFFERTY
also known as Greg Jack and as
George T. Markos
SHAHBAZ SHANE ZARINTASH
LEON JACQUES GST
MARSHALL MECHANIK, also known as
Michael Patrick Flanagan
STEVEN HENRY RIDDLE

Criminal No. 79-20056-01
18 U.S.C. § 371 - Ct. 1
21 U.S.C. § 952(a) and
18 U.S.C. § 2 - Ct. 2
18 U.S.C. § §§ 1952(a)(3)
and 2 - Ct. 3
21 U.S.C. § 841(a)(1) and
18 U.S.C. § 2 - Ct. 4
21 U.S.C. § 843(b) - Ct. 5
18 U.S.C § 1952(a)(3) -
Cts. 6, 7, 8, 9, 10, 11 and 12

The Grand Jury Charges:

FIRST COUNT

1. That for an unknown period of time up to and including the 6th day of June, 1979, at Charleston, Kanawha County, West Virginia, and within the Southern District of West Virginia, and elsewhere, BRECK DANA ANDERSON, DAVID THOMAS SEESING, JEROME OTTO LILL, MARK DOUGLAS CHADWICK, JAMES F. CHADWICK, CRAIG BRUCE MCGILVRAY, RUSSELL KOOK, also known as Russell Cook, GREGORY LOUIS MCCAFFERTY, also known as Greg Jack and as George T. Markos, SHAHBAZ SHANE ZARINTASH, LEON JACQUES GAST, MARSHLAL MECHANIK, also known as Michael Patrick Flanagan, and STEVEN HENRY RIDDLE, the defendants, did wilfully and knowingly combine, conspire, confederate and agree together and with each other and with divers other persons, whose names are to the grand jury unknown, to commit offenses against the United States, that is:

a. To unlawfully, knowingly, intentionally and without authority possess with intent to distribute a controlled substance, in violation of Title 21, United States Code, Section 841(a)(1);

b. To travel in interstate and foreign commerce with intent to promote, manage, establish, carry on, and facilitate the promotion, management, establishment and carrying on of an unlawful activity, that is, a business enterprise involving a controlled substance, in violation of Title 18, United States Code, Section 1952(a)(3);

c. To import into the customs territory of the United States from a place outside thereof a Schedule I controlled substance, in violation of Title 21, United States Code, Section 952(a); and

d. To use a commuinication facility, that is, the telephone, in committing, causing and facilitating the commission of acts constituting felonies under the provisions of subschapters I and II of Title 21, United States Code, in violation of Title 21, United States Code, Section 843(b).

2. It was a part of this conspiracy that the defendants and co-conspirators would and did use communication facilities, that is, telephones, in interstate and foreign commerce between various points within and without the United States of America, including but not limited to New York City and other points in the State of New York; Boca Raton, Daytona Beach, Hollywood, Miami and Sarasota in the State of Florida; Parma and Cleveland in the State of Ohio; Madison in the State of Wisconsin; Spartanburg in the State of South Carolina; Waco in the State of Texas; and Belle, Charleston, Parkersburg and Ripley in the State of West Virginia, in committing, causing and facilitating the commission of violations of hte Drug Control statutes of the United States.

3. It was further part of this consparacy that defendants MARK DOUGLAS CHADWICK and JAMES F. CHADWICK, acting under color of their office, that is, each being a Deputy Sheriff of Kanawha County, would and did arrange with their close friend, defendant SHAHBAZ SHANE ZARINTASH, to do the following:

(a) Provide a safe and secure place to land a DC-6 aircraft carrying a contraband cargo at the Kanawha county Airport near Charleston, West Virginia;

(b) Provide a safe and secure place for the aforesaid DC-6 aircraft to be unloaded at the Kanawha County Airport near Charleston, West Virginia; and

(c) Provide the defendants and co-conspirators with a safe departure from the airport.

4. It was part of this conspiracy that defendants BRECK DANA ANDERSON, DAVID THOMAS SEESING and JEROME OTTO LILL would travel in interstate and foreign commerce, via a DC-6 aircraft, from points outside the United States to a point within the United states, that is, Charleston, Kanawha County, West Virginia, by following a flight plan that included

San Marcos in Columbia, South America; Kingston in Jamaica; Inagua in the Bahama Islands; Fayetteville and Greensboro in the State of North Carolina; and Pulaski in the State of Virginia.

5. It was further part of this conspiracy that the aforesaid DC-6 aircrart would carry as contraband cargo approximately 20,000 pounds (ten tons) of marihuana, a Schedule I non-narcotic controlled substance.

6. It was further part of this conspiracy that during the early morning hours of the 6th day of June, 1979, defendants BRECK DANA ANDERSON, DAVID THOMAS SEESING and JEROME OTTO LILL would land the aforesaid DC-6 aircraft at the Kanawha County Airport near Charleston, West Virginia.

7. It was further part of this conspiracy that defendants CRAIG BRUCE MCGILVRAY, RUSSELL KOOK, also known as Russell Cook, GREGORY LOUIS MCCAFFERTY, also known as Greg Jack and as George T. Markos, SHAHBAZ SHANE ZARINTASH, MARSHALL MECHANIK, also known as Michael Patrick Flanagan, LEON JACQUES GAST, STEVEN HENRY RIDDLE and others unknown to the grand jury, would travel in interstate commerce from points outside the State of West Virginia to the Kanawha County Airport near Charleston, West Virginia, with intent to meet the aforesaid DC-6 aircraft and receive the aforesaid contraband cargo which it carried.

8. It was further part of this conspiracy that defendants MARK DOUGLAS CHADWICK, CRAIG BRUCE MCGILVRAY, RUSSELL KOOK, also known as Russell Cook, GREGORY LOUIS MCCAFFERTY, also known as Greg Jack and as George T. Markos, SHAHBAZ SHANE ZARINTASH, LEON JACQUES GAST, MARSHALL MECHANIK, also known as Michael Patrick Flanagan, and STEVEN HENRY RIDDLE would be at the Kanawha County Airport near Charleston, West Virginia, in the early morning hours of

the 6th day of June, 1979, to meet the aforesaid DC-6 aircraft and receive the contraband cargo which it carried.

OVERT ACTS

9. In order to further the objects and purposes of the aforesaid conspiracy, the defendants and co-conspirators did commit the following and other overt acts:

a. On or about the 19th day of April, 1979, a phone call was made from Fern Creek, Kentucky, to Cleveland, Ohio.

b. On or about the 19th day of April, 1979, a phone call was made from Daytona Beach, Florida, to Cleveland, Ohio.

c. On or about the 20th day of April, 1979, defendant GREGORY LOUIS MCCAFFERTY, using the name George T. Markos, rented a Ryder truck in Cleveland, Ohio.

d. On or about the 21st of April, 1979, defendant MARSHALL MECHANIK, using the name Michael Patrick Flanagan, rented a Ryder rental truck in Charleston, West Virginia.

e. On or about the 23rd day of April, 1979, a phone call was made from Fern Creek, Kentucky, to Daytona Beach, Florida.

f. On or about the 24th day of April, 1979, defendant LEON JACQUES GAST received a phone call.

g. On or about the 26th day of April, 1979, defendant DAVID THOMAS SEESING received a phone call.

h. On or about the 27th day of April, 1979, a phone call was made from Fern Creek, Kentucky, to Clevelnd, Ohio.

i. On or about the 27th day of April, 1979, defendant DAVID THOMAS SEESING received a phone call.

j. On or about the 28th day of April, 1979, a phone call was made from Cleveland, Ohio, to Hollywood Beach, Florida.

k. On or about the 28th day of April, 1979, defendant MARSHALL MECHANIK, using the name Michael Patrick Flanagan, rented a Ryder rental truck in Charleston, West Virginia.

l. On or about the 28th day of April, 1979, defendant GREGORY LOUIS MCCAFFERTY, using the name George T. Markos, rented a Ryder truck in Cleveland, Ohio.

m. On or about the 29th day of April, 1979, a phone call was made from Daytona Beach, Florida, to Hollywood Beach, Florida.

n. On or about the 3rd day of May, 1979, a phone call was made from Daytona Beach, Florida, to Waco, Texas.

o. On or about the 3rd day of May, 1979, a phone call was made from Daytona Beach, Florida, to Cleveland, Ohio.

p. On or about the 5th day of May, 1979, a phone call was made by defendant LEON JACQUES GAST to Hollywood Beach, Florida.

q. On or about the 5th day of May, 1979, defendant GREGORY LOUIS MCCAFFERTY, using the name George T. Markos, rented a Ryder rental truck in Cleveland, Ohio.

r. On or about the 5th day of May, 1979, defendant MARSHALL MECHANIK, using the name Michael P. Flanagan, traveled to Charleston, West Virginia.

s. On or about the 7th day of May, 1979, defendant LEON JACQUES GAST received a phone call from Daytona Beach, Florida.

t. On or about the 18th day of May, 1979, defendant STEVEN HENRY RIDDLE made a telephone call.

u. On or about the 22nd day of May, 1979, defendant STEVEN HENRY RIDDLE made a telephone call.

v. On or about the 26th day of May, 1979, defendant STEVEN HENRY RIDDLE made a telephone call.

w. On or about the 2nd day of June, 1979, a telephone call was made from Daytona Beach, Florida, to Waco, Texas.

x. On or about the 3rd day of June, 1979, a telephone call was mde from Waco, Texas, to Daytona Beach, Florida.

y. On or about the 3rd day of June, 1979, defendant GREGORY LOUIS MCCAFFERTY, using the name George T. Markos, rented a Ryder rental truck in Cleveland, Ohio.

z. On or about the 4th day of June, 1979, defendant MARSHALL MECHANIK, using the name Michael Patrick Flanagan, rented a Ryder rental truck near Spartanburg, South Carolina.

aa. On or about the 5th day of June, 1979, a phone call was made from Taylorsville, Kentucky, to Cleveland, Ohio.

bb. On or about he 4th day of June, 1979, defendant JAMES F. CHADWICK received a phone call from near Spartanburg, South Carolina.

cc. On or about the 5th day of June, 1979, in Cleveland, Ohio, defendant GREGORY LOUIS MCCAFFERTY, using the name George T. Markos, exchanged the Ryder truck which he had rented on June 3, 1979, for a larger Ryder rental truck.

dd. On or about the 4th day of June, 1979, defendants MARSHALL MECHANIK, SHAHBAZ SHANE ZARINTASH, and LEON JACQUES GAST traveled from near Spartanburg, South Carolina, to near Charleston, Kanawha County, West Virginia.

ee. On or about the 5th day of June, 1979, defendant STEVEN HENRY RIDDLE made a telephone call.

ff. On or about the 5th day of June, 1979, defendants CRAIG BRUCE MCGILVRAY, RUSSELL KOOK, and GREGORY LOUIS MCCAFFERTY, traveled from near Cleveland, Ohio, to Ripley, Jackson County, West Virginia.

gg. On or about the 5th day of June, 1979, defendant RUSSELL KOOK, using the name Russell Cook, registered at a motel in Ripley, West Virginia.

hh. On or about the 5th and 6th days of June, 1979, defendants BRECK DANA ANDERSON, DAVID THOMAS SEESING and JEROME OTTO LILL traveled on the aforesaid DC-6 aircraft containing approximately ten tons of marihuana from outside the United States, particularly Columbia, South America, to the Kanawha County Airport.

ii. At approximately 12:15 a.m. on the 6th day of June, 1979, defendamt JAMES F. CHADWICK arrived at the Kanawha County Jail, Charleston, West Virginia.

jj. At approximately 12:30 a.m. on the 6th day of June, 1979, defendant MARK DOUGLAS CHADWICK traveled to the Eagle Aviation Terminal at the Kanawha County Airport.

kk. At approximately 12:30 a.m. on the 6th day of June, 1979, defendants GREGORY LOUIS MCCAFFERTY, CRAIG BRUCE MCGILVRAY, RUSSELL KOOK, SHAHBAZ SHANE ZARINTASH, LEON JACQUES GAST, MARSHALL MECHANIK, STEVEN HENRY RIDDLE and unknown others traveled to the general Aviation Area of the Kanawha County Airport in two Ryder rental trucks to meet the aforesaid DC-6 aircraft and receive its contraband cargo.

ll. At approximately 12:40 a.m. on the 6th day of June, 1979, at the Kanawha County Airport, defendant

MARK DOUGLAS CHADWICK had a conversation with defendant SHAHBAZ SHANE ZARINTASH.

mm. In the early morning hours of the 6th day of June, 1979, at the General Aviation Area of the aforesaid Kanawha County Airport, defendant SHAHBAZ SHANE ZARINTASH possessed radio equipment for the purpose of communicating from the ground to airborne aircraft.

nn. In the early morning hours of the 6th day of June, 1979, at the Kanawha County Airport, defendant MARK DOUGLAS CHADWICK possessed a hand-held communication unit.

oo. At approximately 12:45 a.m. on the 6th day of June, 1979, defendants BRECK DANA ANDERSON, DAVID THOMAS SEESING and JEROME OTTO LILL requested the control Tower at the Kanawha County Airport to provide landing instructions for the aforesaid DC-6 aircraft.

pp. At approximately 12:53 a.m. on the 6th day of June, 1979, defendants BRECK DANA ANDERSON, DAVID THOMAS SEESING and JEROME OTTO LILL attempted to land the aforesaid DC-6 aircraft at the Kanawha County Airport.

qq. At approximately 1:00 a.m. on the 6th day of June, 1979, defendant JAMES F. CHADWICK received a telephone call at the Kanawha County Jail, Charleston, West Virginia.

rr. At approximately 1:05 a.m. on the 6th day of June, 1979, defendant MARK DOUGLAS CHADWICK advised the defendants and unknown others in the aforesaid Ryder rental trucks that their plane had crashed and that their cargo was all over the hillside.

ss. At approximately 1:05 a.m. on the 6th day of June, 1979, defendant MARK DOUGLAS CHADWICK aided the flight of the defendants and unknown others in the aforesaid Ryder rental trucks from the premises of the Kanawha County Airport.

tt. At approximately 1:10 a.m. on the 6th day of June, 1979, defendant JAMES F. CHDAWICK arrived at the scene of the crash of the aforesaid DC-6 aircraft.

uu. At approximately 1:10 a.m. on the 6th day of June, 1979, defendant MARK DOUGLAS CHADWICK falsely advised the Kanawha County Sheriff's Department and its personnel that he was on Greenbrier Street and proceeding to the airport, when, in fact, he was then present at the Kanawha County Airport.

vv. From approximately 12:53 a.m. until approximately 2:07 a.m. on the 6th day of June, 1979, defendant MARK DOUGLAS CHADWICK intentionally withheld from law enforcement authorities his knowledge of the presence and flight of the two Ryder rental trucks and their occupants from the Kanawha County Airport.

ww. At approximately 2:07 a.m. on the 6th day of June, 1979, defendant MARK DOUGLAS CHADWICK falsely advised the Kanawha County Sheriff's Department and its representatives that he had observed one Ryder truck containing one white male; and

xx. Other overt acts.

ALL IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTION 371.

SECOND COUNT

On or about the 6th day of June, 1979, at the Kanawha County Airport, near Charleston, Kanawha County, West Virginia, and within the Southern District of West Virginia, defendants BRECK DANA ANDERSON, DAVID THOMAS SEESING, and JEROME OTTO LILL, aided and abetted by each other, did unlawfully import in the United States from a place outside thereof approximately 20,000 pounds of marihuana, a Schedule I non-narcotic controlled substance as defined in Title 21, Code of Federal Regulations, Section 1308.11(d)(13); in violation of Title 21, United States Code, Section 952(a) and Title 18, United States Code, Section 2.

THIRD COUNT

On or about the 5th and 6th days of June, 1979, defendants BRECK DANA ANDERSON, DAVID THOMAS SEESING, and JEROME OTTO LILL, aided and abetted by each other, did travel in interstate and foreign commerce from points outside the state of West Virginia and the United States of America, that is, Columbia in South America, to the Kanawha County Airport, near Charleston, Kanawha County, West Virginia, and within the Southern District of West Virginia, with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment nad carrying on of an unlawful activity, that is, a business enterprise involving marihuana, a Schedule I non-narcotic controlled substance, and did thereafter perform, attempt to perform, and cause to be performed acts to promote, manage, establish, and carry on said unlawful activity; in violation of Title 18, United States Code, Sections 1952(a)(3) and 2.

FOURTH COUNT

On or about the 6th day of June, 1979, at Kanawha County Airport, near Charleston, Kanawha County, West Virginia, and within the Southern District of West Virginia, defendants BRECK DANA ANDERSON, DAVID THOMAS SEESING, and JEROME OTTO LILL, aided and abetted by each other, did unlawfully, knowingly, intentionally and without authority possess with intent to distribute a controlled substance, that is, approximately 20,000 pounds of marihuana, a Schedule I non-narcotic controlled substance as defined by Title 21, Code of Federal Regulations, Section 1308.11(d)(13); in violation of Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code, Section 2.

FIFTH COUNT

On or about the 4th day of June, 1979, at or near Belle, Kanawha County, West Virginia, and within the

Southern District of West Virginia, defendant JAMES F. CHADWICK did knowingly and intentionally use a communication facility, that is, the telephone, to receive and transmit information between the Southern District of West Virginia and a point near Spartanburg in the State of South Carolina, in committing, causing and facilitating the commission of acts constituting felonies under the provisions of subchapters I and II of Chapter 13, jTitle 21, United States Code, that is, Sections 841(a)(1), 846 and 952(a) of Title 21, United States Code; in violation of Title 21, United States Code, Section 843(b).

SIXTH COUNT

On or about the 5th day of June, 1979, defendant GREGORY LOUIS MCCAFFERTY, also known as Greg Jack and as George T. Markos, did travel in interstate commerce from near Cleveland, Ohio to the Kanawha County Airport near Charleston, Kanawha County, West Virginia, and within the Southern District of West Virginia, with intent to promote, manage, establish, carry on nd facilitate the promotion, management, establishment and carrying on of an unlawful activity, that is, a business enterprise involving marihuana, a Schedule I non-narcotic controlled substance, and did thereafter perform, attempt to perform, and cause to be performed acts to promote, manage, establish, and carry on said unlawful activity; in violation of Title 18, United States Code, Section 1952(a)(3).

SEVENTH COURT

On or about the 5th day of June, 1979, defendant RUSSELL KOOK, also known as Russell Cook, did travel in interstate commerce from near Cleveland, Ohio to the Kanawha County Airport near Charleston, Kanawha County, West Virginia, and within the Southern District of West Virginia, with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful

activity, that is, a business enterprise involving marihuana, a Schedule I non-narcotic controlled substance, and did therefore perform, attempt to perform, and cause to be performed acts to promote, manage, establish, and carry on said unlawful activity; in violation of Title 18, United States Code, Section 1952(a)(3).

EIGHTH COUNT

On or about the 5th day of June, 1979, defendant CRAIG BRUCE MCGILVRAY did travel in interstate commerce from near Cleveland, Ohio to the Kanawha County Airport near Charleston, Kanawha County, West Virginia, and within the Southern District of West Virginia, with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity, that is, a business enterprise involving marihuana, a Schedule I non-narcotic controlled substance, and did thereafter perform, attempt to perform, and cause to be performed acts to promote, manage, establish, and carry on said unlawful activity; in violation of Title 18, United States Code Section 1952(a)(3).

NINTH COUNT

On or before the 5th day of June, 1979, defendant SHAHBAZ SHANE ZARINTASH did travel in interstate commerce from points outside the State of West Virginia, including New York City, New York, and near Spartanburg, South Carolina, to the Kanawha County Airport, near Charleston, Kanawha County, West Virginia, and within the Southern District of West Virginia, with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity, that is, a business enterprise involving marihuana, a Schedule I non-narcotic controlled substance, and did thereafter perform, attempt to perform, and cause to be performed acts to promote, manage, establish, and carry on said unlawful activity; in violation of Title 18, United States Code, Section 1952(a)(3)

TENTH COUNT

On or about the 4th day of June, 1979, defendant MARSHALL MECHANIK, also known as Michael Patrick Flanagan, did travel in interstate commerce from at or near Spartanburg, South Carolina to the Kanawha County Airport, near Charleston, Kanawha County, West Virginia, and within the Southern District of West Virginia, with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity, that is, a business enterprise involving marihuana, a Schedule I non-narcotic controlled substance, and did thereafter perform, attempt to perform, and cause to be performed acts to promote, manage, establish, and carry on said unlawful activity; in violation of Title 18, United States Code, Section 1952(a)(3).

ELEVENTH COUNT

On or before the 5th day of June, 1979, defendant LEON JACQUES GAST did travel in interstate commerce from points outside the State of West Virginia, including New York City, New York, and near Spartanburg, South Carolina, to the Kanawha County Airport, near Charleston, Kanawha County, West Virginia, and within the Southern District of West Virginia, with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity, that is, a business enterprise involving marihuana, a Schedule I non-narcotic controlled substance, and did thereafter perform, attempt to perform and cause to be performed acts to promote, manage, establish, and carry on said unlawful activity; in violation of Title 18, United States Code, Section 1952(a)(3).

TWELFTH COUNT

On or before the 5th day of June, 1979, defendant STEVEN HENRY RIDDLE did travel in interstate

commerce from points outside the State of West Virginia, including Taylorsville, Kentucky to the Kanawha County Airport, near Charleston, Kanawha County, West Virginia, and within the Southern District of West Virginia, with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity, that is, a business enterprise involving marihuana, a Schedule I non-narcotic controlled substance, and did thereafter perform, attempt to perform, and cause to be performed acts to promote, manage, establish and carry on said unlawful activity; in violation of Title 18, United States Code, Section 1952(a)(3).

A True Bill.

Harry M. Slaughter /sig/
Foreman

ROBERT B. KING
United States Attorney

By. E. LESLIE HOFFMAN III
Assistant United States Attorney.

A TRUE COPY, Certified this
31st day of March, 1980

JAMES A. MCWHORTER, CLERK
By *Rhonda Matson /sig/*
Deputy

Redacted Indictment

REDACTED
4/30/80
UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
AUGUST 9, 1979 SESSION, GRAND JURY NO. TWO
CHARLESTON

UNITED STATES OF AMERICA

V.

BRECK DANA ANDERSON
DAVID THOMAS SEESING
JEROME OTTO LILL
MARK DOUGLAS CHADWICK
JAMES F. CHADWICK
CRAIG BURCE MCGILVRAY
RUSSELL KOOK, also known
as Russell Cook
GREGORY LOUIS MCCAFFERTY,
also known as Greg Jack and as
George T. Markos
SHAHBAZ SHANE ZARINTASH
LEON JACQUES GAST
MARSHALL MECHANIK, also known as
Michael Patrick Flanagan
STEVEN HENRY RIDDLE

Criminal No. 79-20056-01

18 U.S.C. § 371 — Ct. 1
21 U.S.C. § 952(a) and
18 U.S.C. § 2 — Ct. 2
18 U.S.C. § §§1952(a)(3)
and 2 — Ct.3
21 U.S.C. § 841(a)(1) and
18 U.S.C. § 2 — Ct. 4
21 U.S.C. § 843(b) — Ct. 5
18 U.S.C. § 1952(a)(3) —
Cts. 6, 7, 8, 8, 10, 11 and 12

The Grand Jury Charges:

FIRST COUNT

1. That for an unknown period of time up to and including the 6th day of June, 1979, at Charleston, Kanawha County, West Virginia, and within the Southern District of West Virginia, and elsewhere, BRECK DANA ANDERSON, DAVID THOAMS SEESING, JEROME OTTO LILL, MARK DOUGLAS CHADWICK, JAMES F. CHADWICK, CRAIG BRUCE MCGILVRAY, RUSSELL KOOK, also known as Russell Cook, GREGORY LOUIS MCCAFFERTY, also known as Greg Jack and as George T. Markos, SHAHBAZ SHANE ZARINTASH, LEON JACQUES GAST, MARSHALL MECHANIK, also known as Michael Patrick Flanagan, and STEVEN HENRY RIDDLE, the defendants, did wilfully and knowingly combine, conspire, confederate and agree together and with each other and with divers other persons, whose names are to the grand jury unknown, to commit offenses against the United States, that is:

a. To unlawfully, knowingly, intentionally and without authority possess with intent to distribute a controlled substance, in violation of Title 21, United States Code, Section 841(a)(1);

b. To travel in interstate and foreign commerce with intent to promote, manage, establish, carry on, and facilitate the promotion, management, establishment and carrying on of an unlawful activity, that is, a business enterprise involving a controlled substance, in violation of Title 18, United States Code, Section 1952(a)(3);

c. To import into the customs territory of the United States from a place outside thereof a Schedule I controlled substance, in violation of Title 21, United States Code, Section 952(a); and

d. To use a communication facility, that is, the telephone, in committing, causing and facilitating the commission of acts constituting felonies under the provisions of subchapters I and II of Title 21, United States Code, in violation of Title 21, United States Code, Section 843(b).

2. It was a part of this conspiracy that the defendants and co-conspirators would and did use communication facilities, that is, telephones, in interstate and foreign commerce between various points within and without the United States of America, including but not limited to New York City and other points in the State of New York; Boca Raton, Daytona Beach, Hollywood, Miami and Sarasota in the State of Florida; Parma and Cleveland in the State of Ohio; Madison in the State of Wisconsin; Spartanburg in the State of South Carolina; Waco in the State of Texas; and Belle, Charleston, Parkersburg and Ripley in the State of West Virginia, in committing, causing and facilitating the commission of violations of the Drug Control statues of the United States.

3. It was further part of this conspiracy that defendants MARK DOUGLAS CHADWICK and JAMES F. CHADWICK, acting under color of their office, that is, each being a Deputy Sheriff of Kanawha County, would and did arrange with their close friend, defendant SHAHBAZ SHANE ZARINTASH, to do the following:

(a) Provide a safe and secure place to land a DC-6 aircraft carrying a contraband cargo at the Kanawha County Airport near Charleston, West Virginia;

(b) Provide a safe and secure place for the aforesaid DC-6 aircraft to be unloaded at the Kanawha County Airport near Charleston, West Virginia; and

(c) Provide the defendants and co-conspirators with a safe departure from the airport.

4. It was part of this conspiracy that defendants BRECK DANA ANDERSON, DAVID THOMAS SEESING and JEROME OTTO LILL would travel in interstate and foreign commerce, via a DC-6 aircraft, from points outside the United States to a point within the United States, that is, Charleston, Kanawha County, West Virginia, by following a flight plan that included San Marcos, in Columbia, South America; Kingston in Jamaica; Inagua in the Bahama Islands; Fayetteville and Greensboro in the State of North Carolina; and Pulaski in the State of Virginia.

5. It was further part of this conspiracy that the aforesaid DC-6 aircraft would carry as contraband cargo approximately 20,000 pounds (ten tons) of marihuana, a Schedule I non-narcotic controlled substance.

6. It was further part of this conspiracy that during the early morning hours of the 6th day of June, 1979, defendants BRECK DANA ANDERSON, DAVID THOMAS SEESING and JEROME OTTO LILL would land the aforesaid DC-6 aircraft at the Kanawha County Airport near Charleston, West Virginia.

7. It was further part of this conspiracy that defendants CRAIG BRUCE MCGILVRAY, RUSSELL KOOK, also known as Russell Cook, GREGORY LOUIS MCCAFFERTY, also known as Greg Jack and as Geroge T. Markos, SHAHBAZ SHANE ZARINTASH, MARSHALL MECHANIK, also known as Michael Patrick Flanagan, LEON JACQUES GAST, STEVEN HENRY RIDDLE and others unknown to the grand jury, would travel in interstate commerce from points outside the State of West Virginia to the Kanawha County Airport near Charleston, West Virginia, with intent to meet the aforesaid DC-6 aircraft and receive the aforesaid contraband cargo which it carried.

8. It was further part of this ocnspiracy that defendants MARK DOUGLAS CHADWICK, CRAIG BRUCE MCGILVRAY, RUSSEL KOOK, also known as

Russell Cook, GREGORY LOUIS MCCAFFERTY, also known as Greg Jack and as George T. Markos, SHAHBAZ SHANE ZARINTASH, LEON JACQUES GAST, MARSHALL MECHANIK, also known as Michael Patrick Flanagan, and STEVEN HENRY RIDDLE would be at the Kanawha County Airport near Charleston, West Virginia, in the early morning hours of the 6th day of June, 1979, to meet the aforesaid DC-6 aircraft and receive the contraband cargo which it carried.

OVERT ACTS

9. In order to further the objects and purposes of the aforesaid conspiracy, the defendants and co-conspirators did commit the following and other overt acts:

a. On or about the 19th day of April, 1979, a phone call was made from Fern Creek, Kentucky, to Cleveland, Ohio.

b. On or about the 19th day of April, 1979, a phone call was made from Daytona Beach, Florida, to Cleveland, Ohio.

c. On or about the 20th day of April, 1979, defendant GREGORY LOUIS MCCAFFERTY, using the name George T. Markos, rented a Ryder rental truck in Cleveland, Ohio.

e.On or about the 23rd day of April, 1979, a phone call was made from Fern Creek, Kentucky, to Daytona Beach, Florida.

f. On or about the 27th day of April, 1979, a phone call was made from Fern Creek, Kentucky, to Cleveland, Ohio.

g. On or about the 28th day of April, 1979, defendant MARSHALL MECHANIK, using the name Michael Patrick Flanagan, rented a Ryder rental truck in Charleston, West Virginia.

h. On or about the 28th day of April, 1979, defendant GREGORY LOUIS MCCAFFERTY, using the name

George T. Markos, rented a Ryder rental truck in Cleveland, Ohio.

i. On or about the 3rd day of May, 1979, a phone call was made from Daytona Beach, Florida, to Waco, Texas.

j. On or about the 3rd day of May, 1979, a phone call was made from Daytona Beach, Florida, to Cleveland, Ohio.

k. On or about the 5th day of May, 1979, defendant GREGORY LOUIS MCCAFFERTY, using the name George T. Markos, rented a Ryder rental truck in Cleveland, Ohio.

l. On or about the 5th day of May, 1979, defendant MARSHALL MECHANIK, using the name Michael P. Flanagan, traveled to Charleston, West Virginia.

m. On or about the 3rd day of June, 1979, a telephone call was made from Waco, Texas, to Daytona Beach, Florida.

n. On or about the 3rd day of June, 1979, defendant GREGORY LOUIS MCCAFFERTY, using the name George T. Markos, rented a Ryder rental truck in Cleveland, Ohio.

o. On or about the 4th day of June, 1979, defendant MARSHALL MECHANIK, using the name Michael Patrick Flanagan, rented a Ryder rental truck near Spartanburg, South Carolina.

p. On or about the 5th day of June, 1979, in Cleveland, Ohio, defendant GREGORY LOUIS MCCAFFERTY, using the name George t. Markos, exchanged the Ryder rental truck which he had rented on June 3, 1979, for a larger Ryder rental truck

q. On or about the 4th day of June, 1979, defendants MARSHALL MECHANIK, SHAHBAZ SHANE ZARINTASH, and LEON JACQUES GAST traveled from near Spartanburg, South Carolina, to near Charleston, Kanawha County, West Virginia.

r. On or about the 5th day of June, 1979, defendants CRAIG BRUCE MCGILVRAY, RUSSELL KOOK, and GREGORY LOUIS MCCAFFERTY, traveled from near Cleveland, Ohio, to Ripley, Jackson County, West Virginia.

s. On or about the 5th day of June, 1979, defendant RUSSELL KOOK, using the name Russell Cook, registered at a motel in Ripley, West Virginia.

t. On or about the 5th and 6th days of June, 1979, defendants BRECK DANA ANDERSON, DAVID THOMAS SEESING and JEROME OTTO LILL traveled on the aforesaid DC-6 aircraft containing approximately ten tons of marihuana from outside the United States, particularly Columbia, South America, to the Kanawha County Airport.

u. At approximately 12:15 a.m. on the 6th day of June, 1979, defendant JAMES F. CHADWICK arrived at the Kanawha County Jail, Charleston, West Virginia.

v. At approximately 12:30 a.m. on the 6th day of June, 1979, defendant MARK DOUGLAS CHADWICK traveled to the Eagle Aviation Terminal at the Kanawha County Airport.

w. At approximately 12:30 a.m. on the 6th day of June, 1979, defendants GREGORY LOUIS MCCAFFERTY, CRAIG BRUCE MCGILVRAY, RUSSELL KOOK, SHAHBAZ SHANE ZARINTASH, LEON JACQUES GAST, MARSHALL MECHANIK, STEVEN HENRY RIDDLE and unknown others traveled to the General Aviation Area of the Kanawha County Airport in two Ryder rental trucks to meet the aforesaid DC-6 aircraft and receive its contraband cargo.

x. At approximately 12:40 a.m. on the 6th day of June, 1979, at the Kanawha County Airport, defendant MARK DOUGLAS CHADWICK had a conversation with defendant SHAHBAZ SHANE ZARINTASH.

y. In the early morning hours of the 6th day of June, 1979, at the General Aviation Area of the aforesaid Kanawha County Airport, defendant SHAHBAZ SHANE ZARINTASH possessed radio equipment for the purpose of communicating from the ground to airborne aircraft.

z. In the early morning hours of the 6th day of June, 1979, at the Kanawha County Airport, defendant MARK DOUGLAS CHADWICK possessed a hand-held communication unit.

aa. At approximately 12:45 a.m. on the 6th day of June, 1979, defendants BRECK DANA ANDERSON, DAVID THOMAS SEESING and JEROME OTTO LILL requested the Control Tower at the Kanawha County Airport to provide landing instructions for the aforesaid DC-6 aircraft.

bb. At approximately 12:53 a.m. on the 6th day of June, 1979, defendants BRECK DANA ANDERSON, DAVID THOMAS SEESING and JEROME OTTO LILL attempted to land the aforesaid DC-6 aircraft at the Kanawha County Airport.

cc. And other overt acts.

ALL IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTION 371.

SECOND COUNT

On or about the 6th day of June, 1979, at the Kanawha County Airport, near Charleston, Kanawha County, West Virginia, and within the Southern District of West Virginia, defendants BRECK DANA ANDERSON, DAVID THOMAS SEESING, and JEROME OTTO LILL, aided and abetted by each other, did unlawfully import into the United States from a place outside thereof approximately 20,000 pounds of marihuana, a Schedule I non-narcotic controlled substance as defined in Title 21, Code of Federal Regulations, Section 1308.11(d)(13); in violation of Title 21, United States Code, Section 952(a) and Title 18, United States Code, Section 2.

THIRD COUNT

On or about the 5th and 6th days of June, 1979, defendants BRECK DANA ANDERSON, DAVID THOMAS SEESING, and JEROME OTTO LILL, aided and abetted by each other, did travel in interstate and foreign commerce from points outside the state of West Virginia and the United States of America, that is, Columbia in South America, to the Kanawha County Airport, near Charleston, Kanawha County, West Virginia, and within the Southern District of West Virginia, with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity, that is, a business enterprise involving marihuana, a Schedule I non-narcotic controlled substance, and did thereafter perform, attempt to perform, and cause to be performed acts to promote, manage, establish, and carry on said unlawful activity; in violation of Title 18, United States Code, Sections 1952(a)(3) and 2.

FOURTH COUNT

On or about the 6th day of June, 1979, at Kanawha County Airport, near Charleston, Kanawha County, West Virginia, and within the Southern District of West Virginia, defendants BRECK DANA ANDERSON, DAVID THOMAS SEESING, and JEROME OTTO LILL, aided and abetted by each other, did unlawfully, knowingly, intentionally and without authority possess with intent to distribute a controlled substance, that is, approximately 20,000 pounds of marihuana, a Schedule I non-narcotic controlled substance as defined by Title 21, Code of Federal Regulations, Section 1308.11(d)(13); in violation of Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code, Section 2.

SEVENTH COUNT

On or about the 5th day of June, 1979, defendant RUSSELL KOOK, also known as Russell Cook, did

travel in interstate commerce from near Cleveland, Ohio to the Kanawha County Airport near Charleston, Kanawha County, West Virginia, and within the Southern District of West Virginia, with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity, that is, a business enterprise involving marihuana, a Schedule I non-narcotic controlled substance, and did thereafter perform, attempt to perform, and cause to be performed acts to promote, manage, establish, and carry on said unlawful activity; in violation of Title 18, United States Code, Section 1952(a)(3).

NINTH COUNT

On or before the 5th day of June, 1979, defendant SHAHBAZ SHANE ZARINTASH did travel in interstate commerce from points outside the State of West Virginia, including New York City, New York, and near Spartanburg, South Carolina, to the Kanawha County Airport, near Charleston, Kanawha County, West Virginia, and within the Southern District of West Virginia, with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity, that is, a business enterprise involving marihuana, a Schedule I non-narcotic controlled substance, and did thereafter perform, attempt to perform, and cause to be performed acts to promote, manage, establish, and carry on said unlawful activity; in violation of Title 18, United States Code, Section 1952(a)(3)

TENTH COUNT

On or about the 4th day of June, 1979, defendant MARSHALL MECHANIK, also known as Michael Patrick Flanagan, did travel in interstate commerce from at or near Spartanburg, South Carolina to the Kanawha County Airport, near Charleston, Kanawha County, West Virginia, and within the Southern District of West Virginia, with intent to promote, manage, establish,

carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity, that is, a business enterprise involving marihuana, a Schedule I non-narcotic controlled substance, and did thereafter perform, attempt to perform, and cause to be performed acts to promote, manage, establish, and carry on said unlawful activity; in violation of Title 18, United States Code, Section 1952(a)(3).

TWELFTH COUNT

On or before the 5th day of June, 1979, defendant STEVEN HENRY RIDDLE did travel in interstate commerce from points outside the State of West Virginia, including Taylorsville, Kentucky to the Kanawha County Airport, near Charleston, Kanawha County, West Virginia, and within the Southern District of West Virginia, with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity, that is, a business enterprise involving marihuana, a Schedule I non-narcotic controlled substance, and did thereafter perform, attempt to perform, and cause to be performed acts to promote, manage, establish and carry on said unlawful activity; in violation of Title 18, United States Code, Section 1952(a)(3).

A True Bill.

Foreman.

ROBERT B. KING
United States Attorney

By:
Assistant United States Attorney

A TRUE COPY, Certified this
31st day of March, 1980
JAMES A. McWHORTER, CLERK
By
Deputy

Defendant's Omnibus Pretrial Motion - Relevant Portion

Unauthorized Persons
Before Grand Jury

The defendants seek a list of all persons who appeared before the grand jury during the course of its investigation, to determine whether or not Rule 6 of the Federal Laws of Criminal Procedure were complied with. Recently, courts have discovered that unauthorized persons appeared before the grand jury, such as, a technician or an Internal Revenue Service agent, and, as a consequence, the indictment had to be dismissed. In order to fully explore this complaint, it is essential that we have a list of all persons who appeared before the grand jury during its ivestigation.

VIII

RESPONSE TO "UNAUTHORIZED PERSONS BEFORE GRAND JURY"

As previously stated, there were no unauthorized persons appearing before the grand jury on behalf of the government in this case.

Defendant's Motion for Dismissal

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON

UNITED STATES OF AMERICA

VS.

BRECK DANA ANDERSON, ET AL.

CRIMINAL NOS. 79-20045
79-20056

MOTION FOR DISMISSAL

Each of the seven defendants, by counsel, moves this Court for an order dismissing this indictment.

The grounds for renewing this previously made pre-trial motion have recently come to counsel's attention when the grand jury testimony of Agents Rheinhart and James was made available to them. That testimony revealed:

(1) That unauthorized persons appeared before the grand jury

(2) That there was no competent evidence, but rather only speculation and conclusions unsupported by facts upon which the grand jury could base an indictment.

(3) Witnesses remained in the grand jury after they had testified while the prosecution instructed the grand jury on the law.

(4) Testimony of the prosecutor, comments of the witnesses prejudiced the grand jury unfairly, and denied defendants due process.

/s/ Alan Silber
ALAN SILBER
Attorney for Marshall Mechanik

/s/ Richard G Chosid
RICHARD G. CHOSID
Attorney for Jerome O. Lill

/s/ Edwin F Kagin, Jr
EDWIN F. KAGIN, JR.
Attorney for Stephan H. Riddle

/s/ Michael B Pollack
MICHAEL B. POLLACK
Attorney for Shabaz Shane Zarintash

/s/ D. J. Esposito
D. J. ESPOSITO
Attorney for Shabaz Shane Zarintash

/s/ W Dale Greene
W. DALE GREENE
Attorney for Mark Chadwick

/s/ John B Carrico
JOHN B. CARRICO
Attorney for James F. Chadwick

/s/ Charles W Giesen
CHARLES W. GIESEN
Attorney for Russell Kook

District Court's Order, March 14, 1980, Denying Defendant's Motion for Dismissal

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON

UNITED STATES OF AMERICA

V.

JEROME OTTO LILL
MARK DOUGLAS CHADWICK
JAMES F. CHADWICK
RUSSELL KOOK, also known as Russell Cook
SHAHBAZ SHANE ZARINTASH
MARSHALL MECHANIK, also known as Michael Patrick Flanagan
STEVEN HENRY RIDDLE

CRIMINAL NO. 79-20056

ORDER

Before the Court is the motion of the seven defendants on trial to dismiss the indictment herein on grounds of an alleged violation of the provisions of Rule 6(d), Federal Rules of Criminal Procedure, involving the alleged presence of an unauthorized person before the grand jury which returned the indictment herein on August 10, 1979;

And the Court having maturely considered the aforesaid motion, the evidence relating to the motion, the memoranda of law submitted by the parties, and the argument of counsel with respect thereto, is of the opinion that the motion to dismiss should be, and it is hereby, denied.

In connection therewith, the Court has made certain findings and conclusions on the record herein, which findings and conclusions are hereby adopted by reference and made a part hereof. In addition, the Court finds as follows:

1. Drug Enforcement Administration Agents James and Rinehart appeared before the grand jury as a joint witness in connection with the presentation of the aforesaid indictment on August 10, 1979.

2. That immediately upon entry to the grand jury room, and prior to the presentation of the indictment to the grand jury and the giving of their testimony, Agents James and Rinehart were administered an oath by the grand jury foreman.

3. At the time of their appearance before the grand jury on August 10, 1979, the aforesaid Drug Enforcement Administration Agents were government personnel to whom disclosure of grand jury material was authorized, and had been made, in connection with the investigation of this case, pursuant to the provisions of Rule 6(e)(3)(A)(ii) of the Federal Rules of Criminal Procedure.

4. Under all of the facts and circumstances of this case, the Court finds that neither Agent James nor Agent Rinehart, as a sworn joint witness under examination, was an unauthorized person before the grand jury.

5. Presenting the testimony of Agents James and Rinehart as a joint witness was proper under the provisions of Rule 6(d), Federal Rules of Criminal Procedure, and was a reasonable and permissible manner in which to conduct the grand jury proceedings on that occasion.

The defendants having further moved the Court for a stay of the trial in this case, which commenced on February 19, 1980, pending their attempt to seek review by the United States Court of Appeals for the Fourth Circuit of the Court's ruling herein;

IT IS ORDERED that the motion for a stay of this trial be and it is hereby overruled and denied.

The Clerk of this Court is hereby directed to mail a certified copy of this order to all counsel of record.

ENTER: March 14, 1980

/s/ Dennis R. Knapp
DENNIS R. KNAPP
Chief United States District Judge

A TRUE COPY, Certified this
17th day of MARCH, 1980
JAMES A. MCWHORTER, CLERK
By */s/ Rhonda Matson*
Deputy

Defendant's Motion for Rehearing, May 5, 1980

THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT
OF WEST VIRGINIA

Criminal No. 79-20056

Plaintiff,

THE UNITED STATES OF AMERICA,

v.

Defendants,

JEROME OTTO LILL, MARK DOUGLAS CHADWICK, JAMES F. CHADWICK, RUSSELL KOOK, SHABAZ SHANE ZARINTASH, STEPHEN HENRY RIDDLE and MARCHSLL MECHANIK.

To: UNITED STATES ATTORNEY
Southern District of West Virginia
United States Court House
Charleston, West Virginia

Sir:

PLEASE TAKE NOTICE that on a date and time to be set by the Court, the undersigned, attorneys for the defendants herein, will move before the Honorable John T. Copenhaver, Jr., U.S.D.C.J., at the United States Court House, Charleston, West Virginia, for a rehearing of defendants' Motion to Dismiss the Indictment on the grounds that unauthorized persons appeared in Grand Jury.

This Motion was heard and denied by the Honorable Dennis R. Knapp on March 14, 1980. On April 30, 1980, the Honorable Robert B. Stokes, U.S.D.C.J., in *United States v. Winter*, decided a motion which embraced the

exact same issue as previously raised by the defendants herein. Judge Stokes dismissed the Indictment because two persons had appeared in the Grand Jury as a "joint witness".

In view of the fact that another United States District Court Judge from the Southern District of West Virginia ruled in a diametrically opposite way than Judge Knapp had ruled on an identical question, the defendants respectfully request a rehearing on the Motion to Dismiss the Indictment on the grounds that unauthorized persons appeared in Grand Jury.

In suport of this Motion, defendants will rely upon the Briefs filed heretofore on the Motion to Dismiss before the Honorable Dennis R. Knapp, U.S.D.C.J., and the supplemental Briefs on the issue which were filed in the Fourth Circuit of the United States Court of Appeals. Defendats will also rely upon the Order and transcript of the hearing in *United States v. Winter*, which will be supplied to the Court as soon as available.

JOHN B. CARRICO, ESQ.
Attorney for Defendant, James F. Chadwick

RICHARD G. CHOSID, ESQ.
Attorney for Defendant Jerome Otto Lill

W. DALE GREEN, ESQ.
Attorney for Defendant Mark Douglas Chadwick

CHARLES W. GEISEN, ESQ.
Attorney for Defendant Russell Kook

MICHAEL B. POLLACK, ESQ. and
NICHOLAS ESPOSITO, ESQ.
Attorneys for Defendant Shahbaz S. Zarintash

EDWIN F. KAGIN, JR., ESQ.
Attorney for Defendant Steven Henry Riddle

PODVEY & SACHS, P.C.
Attorneys for Defendant Marshall Mechanik

/s/ Alan Silber
By: ALAN SILBER

Dated: May 5, 1980

CERTIFICATION

I hereby certify that a copy of the foregoing Motion has been duly served upon the United States Attorney for the Southern District of West Virginia at the United States Court House, Charleston, West Virginia.

/s/ Alan Silber
ALAN SILBER

Dated: May 5, 1980

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

at Charleston

IN RE:

Grand Jury Proceedings
(Grand Jury Number Two)

Criminal Matter No. 79-0308

The testimony of the witness taken on June 12, 1979, at the Grand Jury Room, Federal Building, 500 Quarrier Street, Charleston, Kanawha County, West Virginia.

APPEARANCES: WAYNE A. RICH., ESQ.
Assistant United States Attorney

E. LESLIE HOFFMAN, III, ESQ.
Assistant United States Attorney

• • • • • • • • • • • • • • • • •

(Witness sworn; 2:08 p.m.)

(WHEREUPON, Grand Jury Exhibits Nos. 3, 3-A, 3-B, and 3-C were marked for identification.)

THEREUPON came

MARSHA MILLER, called as a witness, who, having been first duly sworn according to law, testified as follows:

EXAMINATION

BY MR. RICH:

Q State your name, please.

A Marsha Miller.

Q By whom are you employed?

A Ryder Truck Rental.

(69)

Q Where is your office located at the present time?

A 1408 Blizzard Drive, Parkersburg.

Q Marsha, I'm going to show you a copy of a subpoena marked as Grand Jury Exhibit No. 3 in Case No. 79-0308, today's date. Are you appearing here pursuant to that subpoena (indicating)?

A Yes, sir.

Q Were the records searched at the business, being Ryder Truck Rental, Inc., 1400 Blizzard, Parkersburg, West Virginia, to find the materials called for in the subpoena?

A Yes, sir.

Q Is it my understanding you found three contracts specified in the subpoena?

A Yes, sir.

Q The first contract is Rental Contract 357829. Is that correct (indicating)?

A Yes, sir.

Q And it's been marked as Grand Jury Exhibit No. 3-A in this case under today's date, is that correct?

A Yes, sir.

(70)

Q Are those your initials and the date in the red marker at the top there (indicating)?

A Yes, sir.

Q The second one is Rental Contract 357842, is that correct?

A Yes, sir.

Q On the reverse side, again it's marked as Grand Jury Exhibit 3-B, with your initials and the date in red marker at the top. Is that correct (indicating)?

A Yes, sir.

Q And the third one is 357849 (indicating), and it is marked on the back as Grand Jury Exhbiit 3-C, with your initials and today's date in red marker once again, is that correct (indicating)?

A Yes, sir.

Q Were these three documents made and maintained in the normal ordinary course of business of Ryder Truck Rental in Parkersburg?

A Yes, sir, they were.

Q And you are the custodian of these documents?

A Yes, sir.

Q And what is your position at the present time with Ryder Truck?

A I'm administrative manager.

(71) Q And as administrative manager, you have custody over these documents?

A Yes, sir.

Q Okay. Marsha, I'd like to show you the first one, which is 3-A, Rental Contract 357829, and I realize you were not present when this was filled out, but by looking at the document can you tell me whether or not it indicates that the truck was actually picked up by the customer?

A No, sir. He had rented it, but he didn't show up to pick it up on the first two contracts.

Q Does it indicate it was reserved for the week of April 21, 1979, to April 28, 1979?

A Yes, sir.

Q As to the second contract, Exhibit 3-B, does it indicate whether or not the customer picked up this particular truck?

A No, sir, he didn't. We had to hold it again for another week.

Q And that week was April 30, 1979, to May 4, 1979?

A Yes, sir.

(72) Q And the third contract, does it indicate, which is 3-C, does it indicate whether or not this particular vehicle was picked up?

A It was reserved again.

Q And not picked up?

A Right.

Q And that reservation on this third occasion was from May 4, '79, to May 11, '79?

A Yes, sir.

Q In all three instances, in fact, it was the same vehicle, is that right?

A Yes, sir, the same truck for him week after week.

Q And that's why the mileage in and mileage out is the same on the three contracts?

A Yes, sir. The truck never left our property.

Q It shows Dealer Number 253110. Do you know what dealer number that is?

A Yes, sir.

Q What is that?

A A & M Automotive.

Q Automotive Leasing System?

A Yes.

(73) Q Is that at 410 Fiftieth Street in Charleston, West Virginia?

A Yes, sir.

MR. RICH: Any questions by members of the grand jury?

(No response.)

MR. RICH: Thank you, Marsha. You're excused.

(Witness excused; 2:13 p.m.)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

at Charleston

IN RE:

Grand Jury Proceedings
(Grand Jury Number Two)

Criminal Matter No. 79-0308

The testimony of the witnesses taken on June 13, 1979, at the Grand Jury Room Federal Building, 500 Quarrier Street, Charleston, Kanawha County, West Virginia.

APPEARANCES: ROBERT B. KING, ESQ.
United States Attorney

WAYNE A. RICH, JR., ESQ.
Assistant United States Attorney

E. LESLIE HOFFMAN, III, ESQ.
Assistant United States Attorney

(240) A Police officer.

Q Who do you work for?

A Kanawha County Sheriff's Department.

Q What is your rank?

A Corporal.

Q How long have you been with the Sheriff's Department?

A Eight years.

Q Corporal Meadows, what were you doing on the evening of june 5th and June 6th?

A I worked the evening shift in the jail and midnight shift in the Comm Center.

Q What's the evening shift?

A From four to twelve.

Q And midnight shift is what?

A From twelve o'clock till eight o'clock the next morning.

Q So you worked all night?

A Yes, sir.

Q Two shifts?

A Yes, sir.

Q Was that because of the emergency that occurred?

(241) A Yes, sir.

Q You hadn't planned to work over all night?

A No, sir.

Q All right. On the evening of the 5th and 6th, around midnight, did you have occasion to see Sergeant Jim Chadwick?

A Yes, sir, right after midnight.

Q Was that the first time you had seen him that evening?

A Yes, sir.

Q Where did you see him?

A He came through the door into the lobby of the Kanawha County Jail.

Q How was he dressed?

A He was dressed in a blue sport coat, and I don't remember the color of his tie or shirt.

Q He wasn't in uniform?

A No, sir.

Q Was he on duty that night?

A No, sir.

Q Did you hve any conversation with him?

A Yes, sir. When I walked over to him, he said "What in the hell are you still here for?"

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

at Charleston

IN RE:

Grand Jury Proceedings
(Grand Jury Number Two)

Criminal Matter No. 79-0308

The testimony of the witnesses taken on June 13, 1979, at the Grand Jury Room, Federal Building, 500 Quarrier Street, Charleston, Kanawha County, West Virginia.

APPEARANCES: ROBERT B. KING, ESQ.
United States Attorney

WAYNE A. RICH, JR., ESQ.
Assistant United States Attorney

E. LESLIE HOFFMAN, III. ESQ.
Assistant United States Attorney

(182) it's all right with you, Mr. Foreman, is read this exhibit and then Sergeant Mullins can make such additions and corrections as are necessary and appropriate, and myself or members of the grand jury can ask whatever questions are qppropriate.

Is that all right with you?

A Yes.

Q This starts out 'Activity Report of plane crash that occurred at approximately 0100 hours on Wednesday, June 6, 1979. This recording is made by Sgt. L. B. Mullins, Kanawha County Sheriff's Department, Elk Detachment.

"At approximately 12:00 mid-night on June 6, 1979 the undersigned officer responded to Headquarters and went to the 4th floor gym to exercise. At approximately 12:15 the undersigned officer asked inmate Louie Walton to come up to the 4th floor and help the undersigned hang a heavy-bag for exercise purposes. Inmate Walton advised the undersigned officer that Sgt. Jim Chadwick was downstairs in the lobby of the jail and had gone into his office and was making phone calls. The undersigned officer asked inmate Walton why he was there and inmate Walton replied he had no idea, that he never came in at this time or during the night. Inmate Walton assisted the undersigned officer

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTICT OF WEST VIRGINIA
at Charleston

IN RE:

Federal Grand Jury Proceedings
Number 2

Criminal Matter
Number 79-0308

The testimony of witnesses taken June 14, 1979, at Courtroom Number 1, United States Federal Building, 500 Quarrier Street, Charleston, West Virginia.

APPEARANCES: ROBERT B. KING, ESQUIRE
United States Attorney

E. LESLIE HOFFMAN III, ESQUIRE
Assistant United States Attorney

WAYNE A. RICH, JR., ESQUIRE
Assistant United States Attorney

(7) are twelves, eighteens and twenty-twos.

Q During the course of your business there renting Ryder trucks, did you become familiar with the name Michael P. Flannagan?

A Yes, I did.

Q How did you become familiar with that name?

A Mr. Flannagan called and specified a special truck he wanted, the size, the model.

Q Yes, sir. Now, when did that occur? Do you remember when the call was?

A It was about the middle — I believe about the middle of May.

Q All right, sir.

A He wanted a GMC, a 650, a twenty-two foot.

Q And did you reserve that truck for him?

A Well, I told Mr. Flannagan he'd have to come over and put up a deposit; I'd get the truck and hold it for him.

Q Yes, sir. And did he —

A He —

Q Did he come by?

(8) A He didn't come by right then, but he came by, maybe it was a week later, and told me he wanted it the next week. But that was on Memorial weekend. Then he came back and said he was mixed up on his weekends, he wanted it the following week.

Q Which week would that have been?

A On the fourth.

Q On the fourth of June?

A Yes, sir.

Q Did the person known to you as Michael Flannagan come by?

A That's right, he came by.

Q And what happened when he came by your station?

A Mr. Flannagan came by, he looked at the truck. I went with him up to the end of the lot to see if that was the one he wanted, and he put up the seventy-five dollar deposit.

Q Did he pay you in cash?

A Yes, sir.

Q All right. What happened next?

A I filled out the contract (indicating).

Q Yes, sir.

(9) A Then I gave Mr. Flannagan the key.

Q Yes, sir.

A And that was around — between nine and ten o'clock in the morning and he said it would be in the afternoon when he picked it up.

Q What day was this?

A That was on the fourth.

Q Did he come by and pick it up?

A He came by late that afternoon between five and five thirty and he picked the truck up.

Q Did he rent any other equipment from you?

A No, sir — well, the hand trucks. You know, moving like refrigerators, stoves.

Q Would you describe the hand trucks for us?

A Well, they have two wheels on them. They're hand trucks like you use for a refrigerator, stove, washing machine.

Q What did Mr. Flannagan present you in the way of a driver's license?

A Yes, sir. He gave me a Florida driver's license. The number is 742093, had a Florida identification on it.

Q I notice you're reading from a document there. I will ask you what document that is that you have in your hand?

(10) A This is a copy — the copy I made out of my book.

Q And have you this morning in the United States Attorney's Office looked at the original copy of your records from your service station in South Carolina?

A I have.

Q And have you compared the copy you have before you with the original document from your service station in South Carolina?

A Yes, sir, I have.

Q Is the copy before you now a true and correct copy of the document you have in your service station in South Carolina?

A Yes, sir.

Q I believe also that you turned the original copy — that is, the one on file in your service station in South Carolina —

A That's right.

(11) Q — over to Special Agent Randy James with the Drug Enforcement Administration this morning?

A Right.

Q And I believe also that you initialed and dated that original copy, is that correct?

A I sure did. Yes, sir.

Q All right, sir. I'd ask this copy you have referred to be marked as Grand Jury Exhibit 1.

(WHEREUPON, the document referred to was marked Grand Jury Exhibit Number 1, for purposes of identification.)

BY MR. HOFFMAN:

Q Let me go through this with you and ask you to explain just what Mr. Flannagan did when he came in and rented the truck regarding this rental contract.

A What do you mean, the day he came?

Q Yes, sir. How did you get the information to put on this contract?

A Well, I have the serial number of the truck. This is the top middle. Right up here in the middle. All right, the license number, my dealer number code goes right under there (indicating), then the time it is expected in, and the
(12) time out. And underneath there is the mileage, you know, when it's dispatched.

Q All right, sir. I notice a notation on the mileage in on the copy here. Is that a correct copy —

A No, sir, that's not. The carbon was off of another copy.

Q So, you're saying when they were copying off on another rental —

A That's right.

Q — the notations came through on this copy.

A That's right.

A And is that also true for the miles used notation?

A That's right.

Q On the copy?

A Yes.

Q However, the mileage out notation is correct?

A That's right.

Q For this truck, is that right?

A Yes, sir.

Q And that's fifty-six thousand miles, fifty-six thousand twenty-two miles?

(13) A That's right, sir.

Q And that's the correct mileage when you rented Mr. Flannagan the truck?

A Yes. Well, now, this does not show on the original.

Q You mean the miles used and the mileage in?

A That's right.

Q Did Mr. Flannagan sign this contract in your presence?

A Yes, sir, his initials right here where he declined insurance for the cargo and for the truck.

Q You're referring to the left-hand column —

A That's right.

Q — under personal accident and cargo insurance?

A That's right.

Q And he initialed that?

A That's right.

Q Where he declined that and he declined also collision damage waiver, is that correct?

A That's right.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

at Charleston

IN RE:

Grand Jury Proceedings
(Grand Jury Number Two)

Criminal Matter No. 79-0366

The testimony of the witnesses taken on August 2, 1979, at the Grand Jury Room, Federal Building, 500 Quarrier Street, Charleston, Kanawha County, West Virginia.

APPEARANCES: ROBERT B. KING. ESQ.
United States Attorney

E. LESLIE HOFFMAN, III, ESQ.
Assistant United States Attorney

J. TIMOTHY DiPIERO, ESQ.
Assistant United States Attorney

(3) (Witness sworn; 9:57 a.m.)

THEREUPON came

RANDOLPH D. JAMES,

called as a witness, who, having been first duly sworn according to law, testified as follows:

EXAMINATION

BY MR. HOFFMAN:

Q Would you state your name and your occupation?

A Randolph D. James, J-a-m-e-s, Resident Agent in Charge with the Drug Enforcement Administration.

Q And that's in Charleston, West Virginia, is it not?

A Yes.

Q You've appeared previously before the grand jury for presentation of an indictment charging certain individuals with various offences relating to the crash of a DC-6 cargo plane at Kanawha Airport in the early morning hours of June 6, 1979, have you not?

A Yes, I have.

Q Since that time, Agent James, has the Drug Enforcement Administration been conducting a continuing investigation into the events which surround the
(4) crash, particularly as they involved other offences and other individuals in the incident?

A Yes, we have.

Q Would you briefly summarize for the grand jury what investigation steps have been taken since the time of their last meeting to consider the indictments?

A Well, we have — we feel we have located the second Ryder truck that was the subject of a lot of talk. Investigation in Cleveland revealed that Mr. McCafferty, who was indicted earlier, along with others, rented the second Ryder truck in Cleveland.

He rented that truck on a couple of occasions earlier when Mr. Flanigan or Mr. Mechanick, as we know him now, attempted to rent trucks in Charleston. We feel this is probably the sign that they were trying a dry run — in other words, the load was probably supposed to come in earlier and didn't and they did rent it on — they rented a truck on June 3rd of '79, and they brought it back on the 5th and said they needed a larger truck.

Now, during an initial interview of Mr. McCafferty right after the crash, he informed me that he and a second
(5) individual, who he refused to identify, brought the truck, the Ryder truck, to Charleston to pick up the cargo of the airplane, and that they brought two vehicles down — a dark-colored late model Buick and the Ryder truck.

In interviewing the people in Cleveland at the Ryder Rental Agency, they verified the fact that Mr. McCafferty, whom they knew as George Markos, and a second individual, when they came on the 5th to rent the truck were, in fact, driving a dark late model Buick.

Q Has your investigation revealed whether or not a George Markos exists?

A Yes. We hve determined that George Markos does, in fact. exist. George Markos is the brother of McCafferty's girlfriend. Her name, I believe, is Rebecca Markos.

Q All right, sir. go ahead.

A We have obtained all the records, copies of all the records from the rental of the trucks. We have information at this time that probably the second individual who came down with Mr. McCafferty did escape. We do not have him identified as yet.

Q That is based, of course, on the fact that the Ryder rental truck was turned back in —

(6) A Right.

Q — to the agency in Cleveland. Is that correct?

A Yes, it was turned in while Mr. McCafferty was still in jail. We believe they stayed at a motel in Ripley, West Virginia. The gentleman or lady who was driving the Ryder truck and went back - returned back to Ripley to a Best-Western Motel, and then from there placed phone calls to some of our people and then from there drove or returned back to Cleveland, apparently returned the truck.

Q Now, you say "some of our people". You mean other individuals who are suspected of involvement in this activity?

A Right. This is another area of investigation we have pursuing.

We have, as you are aware, obtained the telphone toll records for people, the people that were indicted and also others. This is an attempt to identify the other people, the other people involved in the conspiracy.

These toll records have not only — in analyzing them, we have not only been able to tie our defendants to
(7) each other through phone calls — in other words, in the beginning we had so many people arrested here and, as you rememer, we had four arrested in Montgomery who knew nothing about the airport, and we had some arrested at the airport.

Through their telephone toll records, we have been been able to show that people in Montgomery arrested in the truck did, in fact, know people at the airport.

An interesting point, too, is we have been able to identify other people. In other words, an individual unknown to us, well, for example, in Boca Raton, Florida, all of a sudden we are finding his telephone number on a toll record of, say, an individual, one of the defendants up at the airport. And then we're also finding his toll — him being called — calls between his phone and the telphone of the people arrested in Montgomery and also the telephone of Mr. Jim Chadwick and Mark Chadwick. Telephone calls way back in early — in the early part of the year.

Q So as a result of this subpoenaing of the phone records prior to the last indictment, you have been able to identify other subjects which are involved or potentially involved in these activities, is that correct?

(8) A Very much so.

Q To your knowledge, as a result of that telephone use and involvement we have found to be revealed in the phone calls, I believe there has been a decision made to attempt prosecution for offences not charged in the current pending indictment — that is, use of a wire communication faciity in furtherance of a narcotics enterprise. Is that correct?

A That's true, yes.

Q Go ahead. Do you have anything else for the grand jury?

A Those are the two main areas where we have been able to make some investigative headway.

I think one of our biggest steps so far has been that we have definitely been able to not only prove that there were other people involved in this, but also have, we feel, at least tentatively identified these people. And we are, of course, gathering evidence against these people.

I'm sure that, if we ever are able to get to the bottom of it completely, that we will find that there were a lot more people involved in it than what we have now.

(9) MR. HOFFMAN: Before I ask you for questions, I should caution you that what Mr. James has just told you is a summary of certain steps that he and other agents under his direction have taken since the time of your last meeting on this subject.

You shouldn't regard it as evidence of any other commissions of offences, certainly by the individuals under indictment because that isn't the purpose, of course, of the investigation.It's to identify other persons and other offences involved in the same transaction.

You all will be hearing next week evidence, presentation evidence, in summary form much as you have heard this, identifying other individuals and other offences, which have been brought out as a result of this continuing investigation.

You shouldn't consider what Mr. James has just told you in summary form as evidence of — in other words, evidence that would go toward probable cause of anybody else's involvement in these facts.

But do you all have any questions for Agent James as to what has been going on since the last time you met?

(10) (No response.)

MR. HOFFMAN: Thank you, Randy.

(Witness excused; 10:08 a.m.)

* * * * * * * * * * * * * *

REBECCA MARKOS

(19) was called as a witness and, after being first duly sworn, was examined and testified as follows:

EXAMINATION BY MR. DiPIERO:

Q State your name, please.

A Rebecca Markos.

Q Rebecca, you were subpoenaed, as you know, to
(26) testify before the Grand Jury last week.....

hours of June 6, 1979. Did you receive a phone call from your boyfriend Greg McCafferty?

A Yes, I did.

Q Would you explain that to the ladies and gentlemen of the Grand Jury?

A Okay. It was about 2:00 in the morning, middle of the night, and the phone rang, and I answered it, and it was Greg and he said, "I have bad new, Babe, I'm busted." And that was it. He hung up.

Q What did you do in response to that call?

A Well, I was upset. I didn't know the nature of the call really. So I called Craig's house. I figured if anyone could tell me what was going on, that it would be him.

He wasn't home. His girlfriend answered the phone. And she said — she sounded like she didn't know what was going on. She told me to hang up, that she wanted to leave the line open, and that she would get back to me.

(27) And she didn't call back. So I called her back, and she just said to maintain and she would be in touch with me, that she didn't know anything.

And I called her back again about 8:00 in the morning, and she said that she believed that Greg was in jail. She said, "He's okay, but I think he's in jail."

Q Again, by Greg, we're talking about Greg McCafferty?

A McCafferty, yes.

Q And by Craig's girlfriend, you mean Karen, last name you don't know?

A Right.

Q Did you make a further inquiry the next morning?

A Pardon me?

Q Did you call her the next morning as well, on June 6, the early morning hours of June 6?

A Yes. That's when she told me that she thought he was in jail.

(28) Q Okay. Did there come a time that you had a conversation with Craig McGilvray?

A Yes.

Q How did that occur?

A I had been calling — I was in Columbus at school at the time. And my finals were over, and I came home,

and I'd been calling trying to get hold of Craig, and he called me back — I called him at a pay phone — he gave me this number to call him at a pay phone — and I called him and met him at a Sambo's Restaurant.

Q Did you find that unusual that you would be calling him at a pay phone?

A Yes. He's an unusual fellow though.

Q In what way?

A Just things like that.

BY MR. KING:

Q Was this still the same day?

A No, no. This was a few days later. Did I confuse you?

(29) Q I just wasn't clear. You said that you were in Columbus.

A I was in Columbus and then my finals were over. I came home to Cleveland —

Q When were your finals over and when did you come home?

A The 6th, the evening of the 6th.

Q The evening of the 6th, June 6?

A Yes.

Q Go ahead.

BY MR. DiPIERO:

Q When you first called on the night after Greg McCafferty had called you, and when you first called Craig McGilvray's house, was Craig there?

A No.

Q Did you inquire if he was there?

A No, Well, I said, "Is Craig home?" She said, "No." I didn't say, "Where is he?" or anything like that.

Q Okay. Now, I would like to direct your attention to Sambo's. Did you in fact meet at Sambo's?

(30)

A Yes.

Q Approximately when?

A Oh, gosh. Approximately — I came home on the 6th. The 10th. The 9th or 10th. I'm not sure.

BY MR. KING:

Q Do you remember what day of the week it was?

A No.

BY MR. DiPIERO:

Q What was the substance of that conversation with Craig McGilvray?

A He told me that there had been a plane crash and he told me that he was there.

Q He was where?

A He was in Charleston when the plane crashed. He said he was in a Ryder rental truck and when the plane crashed, that he got out of there, he hid the truck behind a building, and got in his pickup truck, which was

(31)

there, and drove around and looked for people that had gotten away, he was going to pick them up.

He said he couldn't find anyone and that he went back and got the truck, the Ryder truck, and drove it back to Cleveland.

Q Did he say what kind of building he hid the Ryder truck behind?

A A big building.

Q Did he say who he was looking for specifically?

A No.

Q Did you understand that to mean Greg McCafferty that he was looking for as well as other people?

A Yes.

Q Did you talk about Greg during that conversation?

A I asked him about it. He was real hesitant to tell me anything really. After this happened, no one said too much — no one said anything.

(32) Q With the exception of Craig at Sambo's?

A Right.

BY MR KING:

Q Did Craig tell you how he got to Charleston to where the plane crashed?

A No.

Q Did he tell you who traveled with him to Charleston?

A No, sir.

Q Did he tell you how many people traveled with him to Charleston?

A No, sir.

Q Did he tell you where the building was where he hid the Ryder truck?

A No. He said just a big building. He hid it back there.

Q Did he tell you where he had gotten the Ryder truck?

A No. Well, he returned it in Cleveland. He didn't say where he got it.

Q He told you he had returned it in Cleveland?

(33) A Yes. Well, he said, "I drove it back home and returned it."

Q Did you make any inquiries as to how he got a Ryder truck and a pickup truck —

A No. No.

BY MR. DiPIERO:

Q Rebecca, now I'd like to ask you a few questions about and direct you attention to a time in Columbus when Greg McCafferty visited you with a Ryder truck.

Can you explain what occurred with respect to Greg's visit, why he had the truck and that sort of thing?

A Do you want me to go into the whole story?

Q Please.

A Okay. He came down, he hadn't called and told me he was coming, and he had a big Ryder rental truck.

Q About how big would you say it was?

(34) A Oh, pretty big. Maybe — the trailer was about as big as this room, as long as this room.

Q About 20 feet long?

A Approximately.

I had to go to class, and I came back — I had been on vacation in Florida a week or so before that, and when I was in class, he found some photographs of me in Florida with some people that we had met down there and he got upset. He's very jealous.

And I came home and he was just infuriated. So he says, "Come on," and we got in the truck and we returned the truck. We had been arguing the whole time.

I'm sorry — you asked me before why I didn't ask him why he had this big truck. It was weird, but we just returned it, and the truck was rented in my brother's name.

Q Which is what?

A George Markos.

(35) Q How do you know that it was rented in your brother's name?

A I saw the — I was with him when he returned it.

BY MR. KING:

Q Where did he return it?

A He returned it, first of all, to just like a you-rent-em place and they wouldn't accept it and we went to the main dispatch place in Columbus.

Q For Ryder trucks?

A Yes.

Q This Ryder truck wasn't a tractor-trailer, wasn't it?

A No. You mean it didn't have like a hookup to pull it?

Q Right.

A No. It was all connected.

BY MR. DiPIERO:

Q Had you had conversations with Greg relative to bringing in marihuana into the country prior to this time?

(36) A Yes.

Q Could you explain that, please?

A He was always talking about things like that. I never took him seriously. He was — I'd say dreamer, but that's what he was, he always had big ideas and things like that.

Q What kind of things?

A Well, things like a ranch, you know, a horse ranch, and bringing marihuana into the country and making a lot of money, and things like that.

Q How often would he discuss these kinds of things?

A Oh, not constantly, not all the time. Now that I think of it, he had mentioned it, but I never took him seriously until i saw the truck.

Q Then you did understand that truck had some particular purpose?

A Oh, yes.

Q Did you confront him with that?

(37) A Yes.

Q What did he say?

A He said they were going to use it to bring marihuana but for some reason, they couldn't.

Q Did he give a reason why it wasn't going to be used on this particular occasion?

A He said it was raining where they were going to get it from, rainy season he said.

Q What did that mean to you?

A I assumed that it was raining and they didn't want to — I don't know. I assumed a plane and that they didn't want to land a plane if they couldn't get out.

BY MR. KING:

Q You said "they".

A Well, I knew it wasn't Greg alone.

Q Who else —

A He never mentioned any other names before that.

BY MR. DiPIERO:

(38) Q Did he say where they were going to take this marihuana?

A No, sir. Where they were going to take the marihuana?

Q Yes.

A After they got it here?

Q Yes.

A Oh, I'm sorry. Yes. He said they were going to take it to a farmhouse.

Q How many farmhouses do you know that Greg knows?

A Just one.

Q Whose is that?

A Craig McGilvray's.

Q Where is that?

A Lodie, Ohio.

Q Did he say from what country or state that they were going to obtain the marihuana?

A No, sir.

Q Did you have a particular belief or understanding?

A I thought Columbia.

(39) Q When he referred to rainy season, what did that mean to you?

A South America.

Q Rebecca, to the best of your recollection, when is the last time you spoke to Greg McCafferty prior to the airplane crash and his call saying that he was busted?

A It was about four days prior to that.

Q And what was the substance of that conversation?

A He called and said he was in Miami and that — he said they were fixing an airplane and getting ready to go. And I said, "Do whatever you want to do, I don't care." I wasn't particularly pleased to be talking to him at the time anyhow. I was upset with him. He just said they were fixing a plane to go.

Q And what did you understand this to mean?

A That they were fixing the plane to go?

Q Yes.

(40) A That's it. To go to pick up marihuana. Sure.

Q Are you ware, Rebecca, that Greg McCafferty provided a police officer, when he was arrested, a driver's license containing the name of George Markos?

A Yes.

Q Can you explain, to the best of your knowledge —well, first of all, how do you know that that occurred?

A He told me.

Q Greg told you?

A Yes.

Q After he was arrested?

A Yes.

Q And to the best of your knowledge, can you explain how Greg McCafferty got your brother's driver's license?

A Greg's license had been suspended for a traffic violation. I don't know actually what. And he didn't have
(41) a driver's license. So my brother George gave him his. They look a lot alike. He gave him his license to use.

Q And what did you brother do with respect to getting a license?

A I think he reported that license stolen and got him a new one.

Q How long did Greg McCafferty have your brother's license?

A Oh, I don't know. Approximately a year or a year and a half.

Q So he had had it for some time prior to his arrest?

A Oh, yes.

Q Where did Greg McCafferty grow up?

A Across the street from me.

Q Across the street from your house?

A Yes.

Q On what street was that?

A Michael Drive.

Q And what street did you grow up on?

A Larkfield Drive. Corner of Larkfield and Michael.

(43) Q What about Craig McGilvray?

A Down the street.

Q On Michael Drive?

A Yes.

Q Do you know an individual by the name of Jerry Lill?

A Yes.

Q How did you come to know Jerry Lill?

A I first met him — he was dating a girl that I work with.

Q At Markell's?

A Yes. And he was friends of my brother and Greg also. I didn't see them together often but I knew they were acquaintances.

Q Where was he staying —

A — when I met him?

Q Yes.

A I don't know.

Q Where did you meet him?

A At the restaurant I believe. Yes.

(44) Q Did you know where he was staying during the last few months?

A The last few months now?

Q This past year.

A He was staying in Lodie since this accident.

Q Have you been to Lodie since the plane crash?

A Yes.

Q At Craig McGilvray's farm?

A Yes.

Q For what reason?

A We went there the night Greg got out of jail.

Q Who's "we"?

A My brother, Greg, myself, and Craig and Karen were already out there.

Q By Craig, you mean Craig McGilvray?

A McGilvray.

Q And Karen —

A And I don't know her last name.

(45) Q And that's Craig's girlfriend?

A Yes.

Q Did you discuss the events on the night of June 5 and June 6?

A No, sir. Nobody wanted to talk about it We were having a cookout and Greg was out of jail and nobody said anything.

Q How do you know that Jerry Lill is now residing at Craig McGilvray's farm in Lodie, Ohio?

A I had been out there another time when he was there.

Q This is, again, since Greg returned for that first party that you-all had?

A Yes.

Q Is there anything else that I haven't asked you about that either we've discussed or that you would like to advise the ladies and gentlemen of the Grand Jury?

A Not really.

BY MR. KING:

Q Ms. Markos, where does your brother work?

(46) A Markell's Restaurant.

Q He's involved in the restaurant?

A Yes.

Q How old is he?

A 24.

Q How old is Craig McGilvray?

A Oh, approximately 27 or 28.

Q What does Craig McGilvray look like?

A Short, blonde hair, kind of fat.

Q By blonde hair, is it long hair, short hair, straight hair, curly hair?

A Oh, I'm sorry. Straight hair. Kind of shaggy. Blonde.

Q How short?

A Just touches his collar.

Q How short is he?

A Oh, I'm sorry.

Q My fault.

A Gosh, I don't know. Five-six, five-seven.

Q Does he keep dogs?

(48) it with your brother George?

A No, sir.

Q Where is George now?

A On vacation.

Q Where?

A Don't know.

Q How long has he been on vacation?

A A week and a half.

Q When was it that you returned the Ryder rental truck in Columbus? I know it was after you went to Florida.

A Yes.

Q Using that as a frame of reference, when was it?

A Early May

Q Do you know a man by the name of Donald Weills?

A Yes.

Q Where does he live?

A Lodie.

Q Lodie, Ohio?

(52) people that were arrested?

A Yes.

Q Did you recognize any of the other names besides Jerry Lill?

A No.

Q And Greg McCafferty.

BY MR KING:

Q You talked about a Ryder truck that Craig came to Columbus with.

A No. Greg.

Q Right. Greg came to Columbus with a Ryder truck in early May —

A Yes.

Q — and returned it in Columbus and you were with him.

A Yes.

Q And that's the one you said had been rented in your brother's name and wasn't going to be used because it was raining.

A Right. But my brother didn't rent the truck.

(53) Q It was rented by Greg.

A Yes.

Q I understand. But, now, that was a different truck than the one you talked to Craig about —

A Right.

Q — after the plane crashed.

A Right.

Q Okay. When you talked to Craig at Sambo's three or four days after the plane crashed, he told you about a Ryder truck that he had had in Charleston, West Virginia.

A Yes.

Q Is that right?

A Right

Q That he had had a Ryder truck in Charleston, West Virginia, at the time the plane crashed —

A Right.

Q — and he told you that he had returned that
(54) Ryder truck in Cleveland, Ohio, is that correct?

A Right.

Q Do you recall Greg being in Florida sometime in May?

A Yes, sir.

Q Did he call your apartment?

A He called my apartment all the time.

Q Collect?

A Yes.

Q And that's the apartment in Columbus at Ohio State University that you maintain with Mary Koons?

A Right.

Q The phone is in Mary Koons' name?

A Right.

Q So the phone calls from Florida to you collect are from Greg McCafferty?

A Yes.

Q And there are several of them. I've seen the phone
(55) records. From I believe the 9th or 10th of May through I believe the 15th or 16th of May.

A Well — everyday.

Q That would be Greg McCafferty calling you?

A Yes.

Q Do you know where he was in Florda?

A No, sir. He didn't say.

Q He didn't say?

A I didn't ask him. He said he was recuperating. He had fallen 45 feet at work. He's an ironworker. And he was in the hospital for three days. He was in intensive care for three days and he got out and went to Florida.

Q And he recuperated?

A Yes.

Q But you don't know where he was recuperating?

A No.

Q Or who he went to Florida with?

(56) A No.

BY MR. DiPIERO:

Q Have you talked to Greg McCafferty since the plane carsh —

A Yes.

Q — about what he was doing here in Charleston?

A He said he was here — it's very sketchy, everything he told me. After this happened, he didn't want to tell me anything. But he said he was here and there was a plane crash and he had fallen, he went to help people and he had fallen down an embankment and he had a broken collar bone, and he said that's how he broke it.

Q He had go to help some people?

A Yes.

Q In the plane itself?

A Yes.

Q Did he indicate how he had got to Charleston?

(57) A No, sir.

Q Did he tell you he had come down in a Ryder truck for instance?

A No.

Q But did he indicate that he was not on the plane?

A He never said he was on the plane, no.

Q But the inference was, from the fact that he had gone to help people, was that he was not on the plane itself?

A Right.

Q Becky, you testified, to the best of your memory, that Greg came down with the Ryder truck to Columbus, Ohio, during the first week of May.

A Approximately.

Q Right.

A But when he said the phone calls from Florida were the 10th, that's when I started to say well, maybe it wasn't then.

Q That's the question.

(58) BY MR. KING:

Q Can you put in the context of when he went to Florida? Was it before or after that?

A To be perfectly honest with you, no.

Q You can't say whether it was before or after?

A No.

Q That's okay. Fine.

BY MR. DiPIERO:

Q Did Greg comment about the plane crash itself?

A He said it was very terrible, very scary.

Q He said that on several occasions to you?

A Yes.

BY MR. KING:

Q What did McGilvray, to your knowledge, do for a living?

A I've always been told that he's in real estate.

(59) Q Do you know the name of his real estate company?

A No.

Q Did you ever ask him what he did to support himself?

A No.

BY MR. DiPIERO:

Q Do you understand him to be in the drug business, illegal sale of drug business?

A I just said, "What's going on?" He called me up. We just had breakfast. I think he wanted to assure me
(61) that Greg was all right. He knew that's what my main concern was. That he was all right.

Q You didn't inquire about what happened or what was going on?

A Oh, yes. I said "What happened?" and he said a plane came in and it crashed into the side of the mountain and he said he got out of there. He was in a Ryder truck.

Q He didn't say what was in the plane or —

A I knew it was marihuana. It had already been in the paper, on the news.

BY MR. DiPIERO:

Q Becky, did he say what route he took home or what cities he went through?

A He went through Athens, Ohio. That's the only name he mentioned. He stopped in Athens he said and had a drink when he crossed the Ohio border.

BY THE GRAND JURY:

Q Does he have his pickup truck back now or have you seen it since the plane crash?

(62) A Yes.

BY MR. DiPIERO:

Q Where did you see it?

A I saw it in Lodie.

BY MR. KING:

Q Was he driving it that morning at Sambo's?

A No. I didn't notice what he was driving. He met me there. He lives close to Sambo's. He could have walked.

Q Does he have other automobiles or vehicles?

A No, I've never seen any.

Q Just a truck?

A Just a truck.

Q Does it have any writing on the side of it?

A No. It's just beat up.

BY MR. DiPIERO:

Q What does McCafferty drive?

A He drives an old '60-something Chevelle. It's a puke green.

Transcript of Grand Jury Testimony, August 10, 1979

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

At Charleston

Re: Grand Jury Proceedings

Criminal Matter No. 79-0366

August 10, 1979

APPEARANCES:

ROBERT KING
United States Attorney

E. LESLIE HOFFMAN
Ass't. U. S. Attorney

TIMOTHY DI PIERO
Ass't. U. S. Attorney

(8) MR. HOFFMAN: Ladies and gentlemen, the proposed indictment that we have before you today to consider is one that includes several of the defendants in the previous case that you considered involving the crash of a DC-6 cargo plane at Kanawha County Airport on June 6, 1979.

I'd like to go over the indictment for you. It does charge some additional defendants and involves some additional or varied charges with some of the already indicted defendants.

The proposed indictment charges that:

"1. That for an unknown period of time up to and including the 6th day of June, 1979, at Charleston, Kanawha County, West Virginia, and within the Southern District of West Virginia, and elsewhere, Breck Dana Anderson, David Thomas Seesing, Jerome Otto Lill, Mark Douglas Chadwick, James F. Chadwick, Craig
(9) Bruce McGilvray, Russell Kook, also known as Russell Cook, Gregory Louis McCafferty, also known as Greg Jack and as George T. Markos, Shahbaz Shane Zarintash, Leon Jacques Gast, Marshall Mechanik, also known as Michael Patrick Flanagan, and Steven Henry Riddle, the defendants, did wilfully and knowingly combine, conspire, confederate and agree together and with each other and with divers other persons, whose names are to the Grand Jury unknown, to commit offenses against the United States, that is:

"a. To unlawfully, knowingly, intentionally and without authority possess with intent to distribute a controlled substance, in violation of Title 21, United States Code, Section 841(a)(1);

"b. To travel in interstate and foreign commerce n, management, establishment and carrying on of an unlawful ctivity, that is, a business enterprise involving a controlled substance, in violation of Title 18, United
(10) States Code, Section 1952(a)(3);

"c. To import into the customs territory of the United States from a place outside thereof a Schedule I controlled substance, in violation of Title 21, United States Code, Section 952(a); and

"d. To use a communication facility, that is, the telephone, in committing, causing and facilitating the commission of acts constituting felonies under the provisions of subchapters I and II of Title 21, United States Code, in violation of Title 21, United States Code, Section 843(b).

"2. It was a part of this conspiracy that the defendants and co-conspirators would and did use communication facilities, that is, telephones, in interstate and foreign commerce between various points within and without the United States of America, including but not limited to New York City and other points in the State of New York; Boca Raton, Daytona Beach, Hollywood,
(11) Miami, and Sarasota in the State of Florida; Parma and Cleveland in the State of Ohio; Madison in the State of Wisconsin; Spartanburg in the State of South Carolina; Waco in the State of Texas; and Belle, Charleston, Parkersburg and Ripley in the State of West Virginia, in committing, causing and facilitating the commission of violations of the Drug Control statutes of the United States.

"3. It was further part of this conspiracy that defendants Mark Douglas Chadwick and James F. Chadwick, acting under color of their office, that is, each being a Deputy Sheriff of Kanawha County, would and did arrange with their close friend, defendant Shahbaz Shane Zarintash, to do the following:

"(a) Provide a safe and secure place to land a DC-6 aircraft carrying a contraband cargo at the Kanawha
(12) County Airport near Charleston, West Virginia;

"(b) Provide a safe and secure place for the aforesaid DC-6 aircraft to be unloaded at the Kanawha County Airport near Charleston, West Virginia; and

"(c) Provide the defendants and co-conspirators with a safe departure from the airport.

"4. It was part of this conspiracy that defendants Breck Dana Anderson, David Thomas Seesing and Jerome Otto Lill would travel in interstate and foreign commerce, via a DC-6 aircraft, from points outside the United States to a point within the United States, that is, Charleston, Kanawha County, West Virginia, by following a flight plan that included San Marcos in Columbia, South America; Kingston in Jamaica; Inagua

in the Bahama Islands; Fayetteville and Greensboro in the State of North Carolina; and Pulaski in the State of Virginia.

"5. It was further part of this conspiracy that the aforesaid DC-6 aircraft would carry as contraband cargo approximately 20,000 pounds (ten tons) of marihuana, a
(13) Schedule I non-narcotic controlled substance.

"6. It was further part of this conspiracy that during the early morning hours of the 6th day of June, 1979, defendants Breck Dana Anderson, David Thomas Seesing and Jerome Otto Lill would land the aforesaid DC-6 aircraft at the Kanawha County Airport near Charleston, West Virginia.

"7. It was further part of this conspiracy that defendants Craig Bruce McGilvray, Russell Kook, also known as Russell Cook, Gregory Louis McCafferty, also known as Greg Jack and as George T. Markos, Shahbaz Shane Zarintash, Marshall Mechanik, also known as Michael Patrick Flanagan, Leon Jacques Gast, Steven Henry Riddle and others unknown to the Grand Jury, would travel in interstate commerce from points outside the State of West Virginia to the Kanawha County Airport near Charleston, West Virginia, with intent to meet the aforesaid DC-6 aircraft and receive the aforesaid contraband cargo which it carried.

(14) "8. It was further part of this conspiracy that defendants Mark Douglas Chadwick, Craig Bruce McGilvray, Russell Kook, also known as Russell Cook, Gregory Louis McCafferty, also known as Greg Jack and as George T. Markos, Shahbaz Shane Zarintash, Leon Jacques Gast, Marshall Mechanik, also known as Michael Patrick Flanagan, and Steven Henry Riddle would be at the Kanawha county Airport near Charleston, West Virginia, in the early morning hours of the 6th day of June, 1979, to meet the aforesaid DC-6 aircraft and receive the contraband cargo which it carried."

Overt acts are:

"9. In order to further the objects and purposes of the aforesaid conspiracy, the defendants and co-conspirators did commit the following and other overt acts:

"a. On or about the 19th day of April, 1979, a phone call was made from Fern Creek, Kentucky, to Cleveland, Ohio.

(15) "b. On or about the 19th day of April, 1979, a phone call was made from Daytona Beach, Florida, to Cleveland, Ohio.

"c. On or about the 20th day of April, 1979, defendant Gregory Louis McCafferty, using the name George T. Markos, rented a Ryder rental truck in Cleveland, Ohio.

"d. On or about the 21st day of April, 1979, defendant Marshall Mechanik, using the name Michael Patrick Flanagan, rented a Ryder rental truck in Charleston, West Virginia.

"e. On or about the 23rd day of April, 1979, a phone call was made from Fern Creek, Kentucky, to Daytona Beach, Florida.

"f. On or about the 24th day of April, 1979, defendant Leon Jacques Gast received a phone call.

"g. On or about the 26th day of April, 1979, defendant David Thomas Seesing received as phone call.

"h. On or about the 27th day of April, 1970, a phone
(16) call was made from Fern Creek, Kentucky, to Cleveland, Ohio.

"i. On or about the 27th day of April, 1979, defendant David Thomas Seesing received a phone call.

"j. On or about the 28th day of April, 1979, a phone call was made from Cleveland, Ohio, to Hollywood Beach, Florida.

A I don't know that for a fact.

Q Has that been your understanding for sometime however?

A I don't like to speculate about them too much.

BY MR. KING:

Q Has anybody ever told you that?

A Come right out and told me that? No.

Q When you say that McCafferty commented that it was very terrible, he still did not indicate that he was on the plane to you, is that correct?

A That's correct.

(60 BY THE GRAND JURY:

Q The one that drove around in the pickup truck, was it his pickup truck or someone else's?

A He said it was his truck.

Q What kind of truck does he have?

A A small pickup truck.

Q Do you know what color it is?

A Tan.

BY MR. KING:

Q Do you know the model? Is it a Ford, Chevrolet or do you know?

A No. It's beat up.

Q Does it hve a camper on the back?

A Sometimes it does and sometimes it doesn't.

BY THE GRAND JURY:

Q You met Craig at Sambo's. What did you have to say to him at that time?

k. On or about the 28th day of April, 1979, defendant Marshall Mechanik, using the name Michael Patrick Flanagan, rented a Ryder rental truck in Charleston, West Virginia.

"l. On or about the 28th day of April, 1979, defendant Gregory Louis McCafferty, using the name George T. Markos, rented a Ryder rental truck in Cleveland, Ohio.

"m. On or about the 29th day of April, 1979 a phone call was made from Daytona Beach, Florida, to Hollywood Beach, Florida.

"n. On or about the 3rd day of May, 1979, a phone call was made from Daytona Beach, Florida, to Waco,
(17) Texas.

"o. On or about the 3rd day of May, 1979, a phone call was made from Daytona Beach, Florida, to Cleveland, Ohio.

"p. On or about the 5th day of May, 1979, a phone call was made by defendant Leon Jacques Gast to Hollywood Beach, Florida.

"q. On or about the 5th day of May, 1979, defendant Gregory Louis McCafferty, using the name George T. Markos, rented a Ryder rental truck in Cleveland, Ohio.

"r. On or about the 5th day of May, 1979, defendant Marshall Mechanik, using the name Michael P. Flanagan, traveled to Charleston, West Virginia.

"t. On or about the 18th day of May, 1979, defendant Steven Henry Riddle made a telephone call.

(18) "u. On or about the 22nd of May, 1979, defendant Steven Henry Riddle made a telephone call.

"w. On or about the 2nd of june, 1979, a telephone call was made from Daytona Beach, Florida, to Waco, Texas.

"x. On or about the 3rd day of June, 1979, a telephone call was made from Waco, Texas, to Daytona Beach, Florida.

"y. On or about the 3rd day of June, 1979, defendant Gregory Louis McCafferty, using the name George T. Markos, rented a Ryder rental truck in Cleveland, Ohio.

"z. On or about the 4th day of June, 1979, defendant Marshall Mechanik, using the name Michael Patrick Flanagan, rented a Ryder rental truck near Spartanburg, South Carolina.

"aa. On or about the 5th day of June, 1979, a phone call was made from Taylorsville, Kentucky, to Cleveland, Ohio.

(19) "bb. On or about the 4th day of June, 1979, defendant James F. Chadwick received a phone call from near Spartanburg, South Carolina.

"cc. On or about the 5th day of June, 1979, in Cleveland, Ohio, defendant Gregory Louis McCafferty, using the name George T. Markos, exchanged the Ryder rental truck which he had rented on June 3, 1979, for a larger Ryder rental truck.

"dd. On or about the 4th day of June, 1979, defendants Marshall Mechanik, Shahbaz Shane Zarintash, and Leon Jacques Gast traveled from near Spartanburg, South Carolina, to near Charleston, Kanawha County, West Virginia.

"ee. On or about the 5th day of June, 1979, defendant Steven Henry Riddle made a telephone call.

"ff. On or about the 5th day of June, 1979, defendants Craig Bruce McGilvray, Russell Kook, and Gregory Louis McCafferty, traveled from near Cleveland, Ohio, to Ripley, Jackson County, West Virginia.

(20) "gg. On or about the 5th day of June, 1979, defendant Russell Kook, using the name Russell Cook, registered at a motel in Ripley, West Virginia.

"hh. On or about the 5th and 6th days of June, 1979, defendants Breck Dana Anderson, David Thomas Seesing and Jerome Otto Lill traveled on the aforesaid DC-6 aircraft containing approximately ten tons of marihuana from outside the United States, particularly Columbia, South America, to the Kanawha County Airport.

"ii. At approximately 12:15 a.m. on the 6th of June, 1979, defendant James F. Chadwick arrived at the Kanawha County Jail, Charleston, West Virginia.

"jj. At approximately 12:30 a.m. on the 6th day of June, 1979, defendant Mark Douglas Chadwick traveled to the Eagle Aviation Terminal at the Kanawha County Airport.

(21) "kk. At approximately 12:30 a.m. on the 6th day of June, 1979, defendants Gregory Louis McCafferty, Craig Bruce McGilvray, Russell Kook, Shahbaz Shane Zarintash, Leon Jacques Gast, Marshall Mechanik, Steven Henry Riddle and unknown others traveled to the General Aviation Area of the Kanawha County Airport in two Ryder rental trucks to meet the aforesaid DC-6 aircraft and receive its contraband cargo.

"ll. At approximately 12:40 a.m. on the 6th day of June, 1979, at the Kanawha County Airport, defendant Mark Douglas Chadwick had a conversation with defendant Shahbaz Shane Zarintash.

"mm. In the early morning hours of the 6th day of June, 1979, at the General Aviation Area of the aforesaid Kanawha County Airport, defendant Shahbaz Shane Zarintash possessed radio equipment for the purpose of communicating from the ground to airborne aircraft.

"nn. In the early morning hours of the 6th day of June, 1979, at the Kanawha County Airport, defendant Mark Douglas Chadwick possessed a hand-held communication unit.

(22) "oo. At approximately 12:45 a.m. on the 6th day of June, 1979, defendants Breck Dana Anderson, David

Thomas Seesing and Jerome Otto Lill requested the Control Tower at the Kanawha County Airport to provide landing instructions for the aforesaid DC-6 aircraft.

"pp. At approximately 12:53 a.m. on the 6th day of June, 1979, defendants Breck Dana Anderson, David Thomas Seesing and Jerome Otto Lill attempted to land the aforesaid DC-6 aircraft at the Kanawha County Airport.

"qq. At approximately 1:00 a.m. on the 6th day of June, 1979, defendant James F. Chadwick received a telephone call at the Kanawha County Jail, Charleston, West Virginia.

"rr. At approximately 1:05 a.m. on the 6th day of June, 1979, defendant Mark Douglas Chadwick advised the defendants and unknown others in the aforesaid Ryder rental trucks that their plane had crashed and that
(23) their cargo was all over the hillside.

"ss. At approximately 1:05 a.m. on the 6th day of June, 1979, defendant Mark Douglas Chadwick aided the flight of the defendants and unknown others in the aforesaid Ryder rental trucks from the premises of the Kanawha County Airport.

"tt. At approximately 1:10 a.m. on the 6th day of June, 1979, defendant James f. Chadwick arrived at the scene of the crash of the aforesaid DC-6 aircraft.

"uu. At approximately 1:10 a.m. on the 6th day of June, 1979, defendant Mark Douglas Chadwick falsely advised the Kanawha County Sheriff's Defendant and its personnel that he was on Greenbrier Street and proceeding to the airport, when, in fact, he was then present at the Kanawha County Airport.

"vv. From approximately 12:53 a.m. until approximately 2:07 a.m. on the 6th day of June, 1979, defendant
(24) Mark Douglas Chadwick intentionally withheld from law enforcement authorities his knowledge of the presence and flight of the two Ryder rental trucks and their occupants from the Kanawha County Airport.

"ww. At approximately 2:07 a.m. on the 6th day of June, 1979, defendant Mark Douglas Chadwick falsely advised the Kanawha County Sheriff's Department and its representatives that he had observed one Ryder truck containing one white male; and

"xx. Other overt acts;

All in violation of Title 18, United States Code, Section 371."

The remainder of the indictment —— the proposed indictment that is —— that is, Counts 2 through 12 contain what are called substantive counts for violation of nonconspiracy laws of the United States. Those violations are set forth primarily in the conspiracy count that I have just recited to you.

(25) I will briefly outline the charges You—all have copies of the indictment before you. You'll be able to refer to the charges in the indictments before making your decision as to whether or not probable cause exists as to return an indictment in this case.

Count 2 of the indictment charges defendants Anderson, Seesing and Lill with importing into the United States from a place outside the United States approximately 20,000 pounds of marihuna which is a violation of Section 952(a) and Section 2. They are charged together as aiders and abetters.

The third count charges Anderson, Seesing and Lill aided and abetted by each other with traveling from points outside the State of West Virginia and the United States, that is, Columbia, South America, to Charleston, West Virginia, with the intent and purpose to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an
(26) unlawful activity, that is, a business enterprise involving marihuana, a Schedule I non-narcotic controlled substance, in violation of Title 18, United States Code, Sections 1952 (a)(3) and 2.

1952 is commonly referred to as the Travel Act. It prohibits interstate or foreign travel by persons engaged in or attempting to be engaged in unlawful activities in violation of the laws of the United States.

The fourth count charges defendants Anderson, Seesing and Lill, aided and abetted by each other, with the unlawful possession with intent to distribute a controlled substance, that is, the 20,000 pounds of marihuana which was the cargo on the DC-6 aircraft.

As you will note in Count 4, they are charged with possession of that cargo here in Kanawha County on the 6th day of June.

The fifth count charges that on the 4th day of June, the defendant James F. Chadwick did knowingly and
(27) intentionally use a communication facility, that is, the telephone, to receive and transmit information between the Southern District of West Virginia, at a point near Spartanburg, South Carolina, in committing, causing and facilitating the commission of acts violating the drug control acts of the United States, which is a violation of Title 21, United States Code, Section 843(b).

The sixth count of the indictment charges Gregory Louis McCafferty, one of the defendants in this case, with a violation of the Travel Act in that he traveled from a point near Cleveland, Ohio, to a point near Charleston, West Virginia, for the purpose of facilitating the promotion, management, establishment and carrying on of the unlawful business involving marihuana.

The seventh count charges Russell Kook with traveling from that same point near Cleveland to a point near Charleston in Kanawha County in violation of 1952.

(28) The eighth count charges the defendant Bruce McGilvray with a violation of 1952, he traveling from the same point near Cleveland to Kanawha County on the day before the airplane crash.

The ninth count charges the defendant Zarintash with traveling from outside the State of Virginia, including the points of New York City, and from Spartanburg, South Carolina, with intent to promote and carry on the illegal business, the marihuana business, a violation of 1952.

The tenth count charges Michael Mechanik with a violation of 1952 in that he traveled from near Spartanburg, South Carolina, to near Charleston, West Virginia, again with the intent to promote, carry on or facilitate the business enterprise involving marihuana.

The eleventh count charges the defendant Gast with traveling, a 1952 violation, from points outside West Virginia, including New York City and Spartanburg,
(29) South Carolina.

The twelfth count charges the defendant Steven Henry Riddle with the Travel act violation. He traveled, it is alleged, from points outside the state, including Taylorsville, Kentucky, to a point near Charleston, West Virginia, with an illegal purpose, in violation of Title 18, United States Code, Section 1952.

Before I get into a factual basis for the plea, and I'd like to ask you—all if you have any questions just on the charges —— Tim is going to give you in a few minutes briefly what the law is on these matters, and what you must consider before finding probable cause that a violation of the law has occurred.

But do you have any questions on the charges themselves before I start the factual basis for the charges?

JUROR: On Count 5, the charge against James Chadwick, is it strictly on the basis of using the telephone?

(30) MR. HOFFMAN: Right.

JUROR: Is there evidence to back any of that up on that?

MR. HOFFMAN: Yes, sir. You'll get that information when the agents present the factual basis for the entire indictment.

JUROR: Now, the three that have been added to this are James Chadwick and Riddle —

MR. HOFFMAN: No, sir. Riddle was an original defendant. We have added McGilvray and Russell Kook, also known as Cook.

JUROR: Now, James Chadwick, he's the father, right?

MR. HOFFMAN: That's right. He's the father of Mark Chadwick.

JUROR: Mark was the one that was directing them at the airport, right?

MR. HOFFMAN: That's right?

JUROR: His father was the one making the telephone calls?

MR. HOFFMAN: Well, you'll hear what the evidence
(31) is in a minute from these agents.

Yes, he was the one that received the telephone call down here at the jail right after the crash.

Whereupon,

JERRY RINEHART and RANDOLPH JAMES were called as witness and, after being first duly sworn, were examined and testified as follows:

MR. HOFFMAN: I wonder, Agent James and Agent Rinehart, if you'll both state your full names for the record, please.

MR. RINEHART: Jerry Allen Rinehart.

MR. JAMES: Randolph D. James.

MR. HOFFMAN: I believe you both have been sworn before commencing this questioning, have you not?

MR. RINEHART: Yes, sir.

MR. JAMES: Yes.

MR. HOFFMAN: And you have both been present
(32) during my recitation of the charges contained in the proposed indictment charging several defendants with violations of the laws of the United States. Is that also correct?

MR. RINEHART: Yes, sir.

MR. JAMES: Yes, sir.

MR. HOFFMAN: I believe both of you are special agents with the Drug Enforcement Administration of the Department of Justice stationed here in Charleston, West Virginia, is that correct?

MR. RINEHART: That's correct.

MR. JAMES: That's correct.

MR. HOFFMAN: In that capacity, do both of you possess knowledge and knformation and belief concerning the facts and circumstances related to the crash of a DC-6 cargo plane in the early morning hours of June 6, 1979?

MR. RINEHART: We do.

MR. JAMES: Yes.

MR. HOFFMAN: Have you both been engaged in the investigation and development of that case since the time of the occurrence of the crash?

(33) MR. RINEHART: I have.

MR. JAMES: Yes.

MR. HOFFMAN: Are both of you then familiar with the facts and circumstances that are detailed in the proposed indictment that's just been recited to the members of the Grand Jury?

MR. RINEHART: Yes, sir.

MR. JAMES: Yes, sir.

MR. HOFFMAN: Agent Rinehart, I believe you will begin.

MR. RINEHART: I was going to start with paragraph 4 of the conspiracy.

The first thing that needs to be explained is the difference in the San Marcos that we alleged in the first indictment and the San Marcos alleged in this indictment.

In the first indictment, we had alleged that this was the San Marcos that we had thought had went to (indicating on map).

(34) MR. HOFFMAN: That is the San Marcos in Guatemala?

MR. RINEHART: Yes. Where we got this was from some burnt flight plans that we had found on the last day of our cleanup at the airport.

We had several other cities that were mentioned but nothing related to San Marcos and the reason we thought this was due to the fact that the plane had a Nicaraguan registration to it, and we felt that this was the area they had went to in order to pick up the load and then disembark and return to the Charleston area, not knowing at this time which direction they would have flown in.

At a later date, after meeting with the FAA officials, we determined that they had departed from somewhere in this area (indicating) on their flight down. This was due to the number of miles that we found on the flight plans.

(35) They went to the Inagua Islands, they hit off this beacon here and went to the Jones Inland intersection. They shot off the Jones Intersection, directly for San Marcos, South America, which is in Columbia, South America.

The last thing that they had on their flight plan was 80 miles 120 degrees which would put them in a southerly direction traveling for a period of 80 miles at 120 degrees right along the river on the other side of the mountains somewhere along this point.

MR. HOFFMAN: I'd like the record to reflect that Agent Rinehart is testifying using a map which depicts North America, Central America, and northern South America, including, of course, West Virginia points in between and the country of Columbia.

Go ahead.

MR. RINEHART: We feel that they had departed this area somewhere around 4 p.m. our time that same day, on June 5. They flew directly back coming the same route heading off the same beacons from their flight route.

They had a target time at Carolina Beach at 10:45 p.m. that night, which would put them exactly in here,
(36) right around 12:50 p.m., and they crashed right at 12:56 p.m. They had overshot the runway one time, which would have delayed them a few minutes circling the runway and coming back.

But the flight plans at Carolina Beach at Pulaski, had Beckley, and from Beckley to the Charleston airport is exactly 42 miles and that is what they had on their flight plan, a total of a little better than 1800 miles, which would take them 9.5 hours to fly 102 miles an hour to this point (indicating) and to this point to make a landing time in here at 12:56, which is the time they crashed.

MR. HOFFMAN: That is from the point in Columbia to the point in Charleston.

MR. RINEHART: That would be sometime — 4 p.m. our time, crashing at 12:56 p.m. Our time.

JUROR: Does that plane have enough fuel to take off from Miami and go all the way down and go back to Charleston?

MR. RINEHART: It would have from this point (indicating) to Charleston and directly on into Canada. Whether the distance from this point down here and then back, whether he could make it or not, I don't know. It
(37) might be pressing it a little bit too far.

JUROR: So they have had to fuel somewhere possibly.

MR. RINEHART: We feel that when they departed from here (indicating) and flew down, they had enough fuel to fly to this area, possibly refueled, and returned here. We feel that they refueled somewhere in this area (indicating).

MR. HOFFMAN: We have no proof of that though.

MR. RINEHART: Not at this time. It would be awfully tough to fly out of here on a dirt strip with 20,000 pounds of marihuana loaded in a DC-6. We don't feel they flew off of just any normal airport. We feel they flew out of a dirt strip. With a full load of fuel and 20,000 pounds, that would be pretty difficult to get all the way back up here (indicating).

JUROR: Was this picked up going down or coming back?

MR. RINEHART: They departed here (indicating), went down, flew 80 miles 120 degrees southeast of San
(38) Marcos, and we feel they picked it up somewhere right in here (indicating), picked it up and returned on June 5.

Now, we don't know when they flew down. It might have been some days prior to June 5. I don't believe so. But it could have been right close to that time. Maybe they arrived there that day, picked it up and returned at the same time.

JUROR: How much flying experience did the licensed pilots aboard that plane have?

MR. RINEHART: Dana Anderson is a known drug

violator, smuggler. He was arrested for smuggling in Morocco, spent I think approximately one year in Tangier's prison in Morocco.

He was also arrested right outside of Bogota, Columbia, I believe sometime in 1974, and spent like eight months in prison, six to eight months in prison here.

MR. HOFFMAN: You-all should not consider his previous arrests or previous incarceration in determining his involvement or whether there is probable cause that he committed these acts, however.

(39) MR. RINEHART: He did have a multi-engine rating, in other words, to fly the plane.

JUROR: You don't know how many hours or anything like that?

MR. RINEHART: No.

MR. JAMES: The way you would determine their hours is from their last medical. I think David Seesing was the pilot who probably had the best credentials for flying. He had ratings in addition to what Anderson had.

I believe his hours of flight time were quite a bit more than Anderson's. I would have to check the records on that to make sure.

But I think his records outweighed Anderson's or his credentials.

MR. HOFFMAN: Agent Rinehart, is there anything else you would like to clear up before we go into the overt acts?

MR. RINEHART: Okay.

MR. HOFFMAN: Let's go through the overt acts beginning with paragraph 9. The overt acts will show how it was part of the conspiracy, the charges in paragraphs 1 through 8.

(40) Do you-all have questions about paragraphs 1 through 8 before we begin in the overt acts?

(No response)

MR. HOFFMAN: Agent Rinehart, do you want to begin?

MR. RINEHART: Overt act (a) reads, "On or about the 19th day of April, 1979, a phone call was made from Fern Creek, Kentucky, to Cleveland, Ohio."

Our investigation determined that Jerome Otto Lill resided at the address of Willard Taylor in Fern Creek, Kentucky.

He had provided this telephone number subsequent to the time he was arrested, the telephone number listed to Willard Taylor in Kentucky.

He made a call on that day to a Mr. Greg Jack who we later determined to be Greg McCafferty, who is a defendant in the indictment.

Greg Jack is the born name of Greg McCafferty. That was his first father before he was deceased and then remarried.

MR. HOFFMAN: You say he made a phone call to Greg Jack. Do we know who the phone call was made to
(41) specifically?

MR. RINEHART: No. We do know the phone is listed to Greg Jack. The residence is owned by Craig McGilvray.

Now, during the entire investigation, we determined that Greg Jack, or Greg McCafferty, being the same person, Craig McGilvray and Jerome Lill have resided at this address.

MR. HOFFMAN: And that is the address in Cleveland, Ohio?

MR. RINEHART: That is Cleveland, Ohio, but on the telephone records, it is listed as Parma, Ohio, a suburb of Cleveland.

MR. HOFFMAN: Let me explain something to you at the outset, and this will help you in your understanding of the way the indictment is charged.

In telephone calls such as those set forth in overt act (a), we know that there was a phone call from a co-conspirator at Fern Creek, Kentucky, to another co-conspirator, a potential defendant, in Cleveland, Ohio.

We do not know the exact identity of those co-
(42) conspirators at this time, but, by looking at the phone calls and realizing the clusters of calls around the other events involved in the case, we feel, and we have embodied our feeling in the proposed indictment, that there is probable cause to believe that these phone calls were made in the furtherance of the conspiracy.

Where the phone calls are charged to — such as in overt act (g) on the next page, page 5, where it was charged that a specific defendant received a phone call, the defendant co-conspirator, we have evidence only that that specific co-conspirator defendant resided at that telephone number, or where that telephone number was located.

Therefore, we have stated specifically that that individual received a phone call from another one of the co-conspirators.

Any questions?

JUROR: Who are you charging?

MR. HOFFMAN: Well, we will explain the conspiracy law to you in a minute. Overt acts are acts that can be as innocent as walking across the street or riding up and down in an elevator. It does not have to be a criminal act per se.

(43) But the act must be done in furtherance of a conspiracy. Ordinarily, a telephone call between two individuals is an innocent act, but, if the phone call is made for the purpose of facilitating the conspiracy or promoting

the conspiracy, then it is an overt act in furtherance of the conspiracy.

And there must be a commission of at least one overt act by at least one of the charged co-conspirators in order for you-all to find that a conspiracy existed.

The overt acts of each of the co-conspirators is imputed, carried over, to all of the co-conspirators, the charged co-conspirators, if you find that the other fellows were a part of the conspiracy.

Tim is going to explain that to you further in a little bit. But let's go through this now and go through what is charged here and we will explain the law to you later.

Go on with (b).

MR. RINEHART: "On or about the 19th day of April, 1979, a phone call was made from Daytona Beach, Florida, to Cleveland, Ohio."

Again, this information was obtained through our
(44) toll record and subscriber information checks through telephone companies.

It was determined that the number at Daytona Beach, Florida, was listed to a Mr. Sanderson who runs a floral shop in that area and who rents that residence to a Russell Kook and a Nick Powers.

And that residence has been rented to Russell Kook and Nick Powers for the past two years.

The phone call was made from, we believe, Russell Kook to, again, the Cleveland residence of Craig McGilvray, which the phone is listed to Greg Jack, in which all three — McCafferty, McGilvray, and Lill — have resided at this residence.

MR. HOFFMAN: I believe, Agent Rinehart, that an analysis of the telephone tolls of the Sanderson number in Daytona Beach reveals numerous calls by and between various of the defendants charged in the indictment, is that correct?

MR. RINEHART: That's correct. We have calls from the Sanderson number, where Kook and Powers reside, to several of the defendants alleged in the indictment.

MR. HOFFMAN: Go ahead with (c).

(45) MR. JAMES: "On or about the 20th day of April, 1979, defendant Gregory Louis McCafferty, using the name George T. Markos, rented a Ryder rental truck in Cleveland, Ohio."

As you are aware, I traveled to Cleveland, interviewed people at the Ryder Truck Rental Company's district office on Brook Park Road in Cleveland, and, in reviewing their records for trucks rented to a George T. Markos, we determined that a George T. Markos had rented trucks, or a truck, a Ryder truck, from them on April 20, 1979.

There was a rental agreement in file reflecting the rental of a truck on that date. An employee of that company who rented the truck to Mr. Markos identified a photograph which was presented in what we call a photo spread, a series of photos, identified a photo of George McCafferty as being the individual who had come in and rented the truck using the name George Markos.

MR. RINEHART: If you will notice from that overt act, then you have a time period of April 23 through April 28 where there are several telephone calls made shortly after the rental of that truck.

(46) Overt act (e) reads, "On or about the 23rd day of April, 1979, a phone call was made from Fern Creek, Kentucky, to Daytona Beach, Florida."

MR. JAMES: There is a second rental of a truck in overt act (d) which I will cover before we get to the phone calls.

Overt act (d) reads, "On or about the 21st day of April, 1979, defendant Marshall Mechanik, using the name Michael Patrick Flanagan, rented a Ryder rental truck in Charleston, West Virginia."

We went to the Ryder Rental Company in Charleston, West Virginia. It is called Automotive Leasing and it is in Kanawha City. And an employee there advised us, told us that who we know as Mr. Mechanik and she knew as Mr. Flanagan had requested a truck from her for a one-day usage for himself to New Jersey.

This truck was never picked up. She has at a later date had an opportunity to meet with Mr. Flanagan or Mr. Mechanik. She has identified a photograph of Mr. Mechanik as being Mr. Flanagan.

MR RINEHART: Again from (e) through (1), we have
(47) several phone calls made during a short period of time, between April 23 and April 28.

The first one, (e), is, "On or about the 23rd day of April, 1979, a phone call was made from Fern Creek, Kentucky, to Daytona Beach, Florida." That is another call from Jerome Otto Lill to Sanderson's residence, again which was rented by Kook and by Powers.

Overt act (f) reads, "On or about the 24th day of April, 1979, defendant Leon Jacques Gast received a phone call."

This is the first time you have seen Gast's name listed in the phone calls. This was from Sanderson's phone in Daytona Beach, and this was on his toll records, to Leon Gast at his residence in New York City.

Are you still with me on that? That was from Daytona Beach to Leon Gast in New York City, called directly to his number listed to him.

Overt act (g) reads, "On or about the 26th day of April, 1979, defendant David Thomas Seesing received a phone call."

This was from Sanderson again at Daytona Beach directly to David Seesing's residence in Cape Girardeau, Missouri.

(48) Overt act (h) reads, "On or about the 27th day of April, 1979, a phone call was made from Fern Creek, Kentucky, to Cleveland, Ohio.

Again, this was a phone call from Lill to Greg Jack's phone in Parma or Cleveland, Ohio.

Overt act (i) reads, "On or about the 27th day of April, 1979, defendant David Thomas Seesing received a phone call.

This was another phone call from Sanderson's residence, again where Kook and Powers reside, to Seesing's residence in Cape Girardeau, Missouri.

Overt act (j) reads, "On or about the 28th day of April, 1979, a phone call was made from Cleveland, Ohio, to Hollywood Beach, Florida.

This is the first time that Hollywood Beach has come into the picture as far as the overt acts. This was from Cleveland, which was Greg Jack's telephone number to a number at the Howard Johnson Motel, room number 722, which was registered to a Mr. Francis Sevoy. This is the same telphone number, or one of the telephone numbers, that was found on the person in the phone book of Dana Breck Anderson after his arrest on the night of the crash.

(49) What you've got is a call to Howard Johnson's at Hollywood Beach to a Mr. Sevoy and the same number in Dana Breck Anderson's phone book found in his possession at the time of the crash.

MR JAMES: Overt act (k) reads, "On or about the 28th day of April, 1979, defendant Marshall Mechanik, using the name Michael Patrick Flanagan, rented a Ryder rental truck in Charleston, West Virginia.

As you recall, a moment ago, I explained that an employee of the Automotive Leasing Company in Kanawha City had identified a photograph of Mr. Mechanik as being the individual she knew as Flanagan.

On April 27, 1979, she had an opportunity to meet Flanagan, or Mechanik, when he appeared personally at their offices. At that time, the employee told Mr. Mechanik that he could pick the truck up on the following day, which is April 28, 1979. He did not pick that truck up on that date.

Overt act (l) reads, "On or about the 28th day of April, 1979, defendant Gregory Louis McCafferty, using the name George T. Markos, rented a Ryder rental truck in Cleveland, Ohio."

Again, going back to my visit to Cleveland, when we
(50) reviewed the records, we found two incidents where trucks had been rented. Actually, there were three incidents where trucks were rented from the company's district office, and that is on Brook Park Road in Cleveland.

The third occasion was on April 28, 1979, and, again, McCafferty was identified as the individual who rented a truck on that date using the name George T. Markos.

MR. RINEHART: Going to overt act (m), "On or about the 29th day of April, 1979, a phone call was made from Daytona Beach, Florida, to Hollywood Beach, Florida."

This is directly from Sanderson's toll records reflecting a call again to the Howard Johnson Motel, room number 722, listed to Mr. Frances Sevoy. There are several calls continued through the indictment, the overt acts in the indictment, where we have calls to this motel room from several of the defendants and calls from this motel room to several of the defendants.

So you should keep this in mind, because we will be
(51) jumping back and forth from one defendant to the other.

Overt act (n) reads, "On or about the 3rd day of May, 1979, a phone call was made from Daytona Beach, Florida, to Waco, Texas."

This was from the Sanderson phone in Daytona Beach to David Seesing, his address in Waco, Texas. What you've got is two addresses now for David Seesing, the one in Cape Girardeau and the one in Waco, Texas, and he is receiving calls at both locations. David Seesing is the pilot on the plane.

Overt act (o) reads, "On or about the 3rd day of May, 1979, a phone call was made from Daytona Beach, Florida, to Cleveland, Ohio."

This, again, is a call from Sanderson, the residence of Kook, to Craig Jack in Parma, Ohio, Greg Jack being Gregory McCafferty.

Overt act (p) reads, "On or about the 5th day of May, 1979, a phone call was made by defendant Leon Jacques Gast to Hollywood Beach, Florida."

Now you've got Mr. Gast calling the Howard Johnson Motel to the room of Mr. Sevoy in Hollywood Beach, Florida, on this date.

(52) MR. JAMES: Overt act (q) reads, "On or about the 5th day of May, 1979, defendant Gregory Louis McCafferty, using the name George T. Markos, rented a Ryder rental truck in Cleveland, Ohio."

As I told you before, we had rentals from the district office. They had some trouble with Mr. McCafferty using the name Markos and so, when he called to attempt to rent a truck on an additional date, they told him they didn't have any available. He therefore went to one of their franchise — you have the district office in Cleveland and then you have like service stations, this type of a company, which will pick up a franchise, and rent Ryder trucks and, of course, all of these rentals go through the district.

So, with this in mind, we went through the records at the district office for the various franchise, and we were able to locate a Seaway Arco Company at 2980 St. Clair Avenue in Cleveland, and we were able to find two rental agreements for George T. Markos.

We went through the service station to see whether Arco interviewed the owner of the gas station or the manager, and he was familiar with Mr. Markos and he
(53) identified a photograph of Mr. McCafferty as being the individual he knew as Mr. Markos.

He told us that he remembered an additional date when a truck was rented. So we went through his records and we came up with a receipt for a rental agreement for a truck which was rented on May 5 of 1979 by Mr. McCafferty using the name, again, Mr. Markos.

Overt act (r) reads, "On or about the 5th day of May, 1979, defendant Marshall Mechanik, using the name Michael P. Flanagan, traveled to Charleston, West Virginia."

In going through some of the telephone information that Agent Rinehart has discussed, we found there were telphone calls from one of the defendants to a Charleston number.

In getting the subscriber information on that number, we found that it was to one of the Holiday Inns in Charleston. We went to that Holiday Inn and reviewed the records of that Holiday Inn and determined that on April 15, 1979, and April 21, 1979, Mr. Flanagan was in Charleston. He was in Charleston on those two dates.

(54) As to the May 5 date, this is covered in the rental agreement.

MR. RINEHART: This was a rental agreement from the main office where it disclosed Mechanik had rented the truck under the name of Michael Flanagan on May 5, 1979, under rental agreement number N357842.

Overt act (s) reads, "On or about the 7th day of May, 1979, defendant Leon Jacques Gast received a phone call from Daytona Beach, Florida."

Again, this was from Sanderson's toll records where Kook resides directly to Leon Gast at his residence in New York.

Overt act (t) reads, "On or about the 18th day of May, 1979, defendant Steven Henry Riddle made a telephone call."

This was from Mr. Riddle's residence and this is the first time that Riddle has come into it as far as the telphone calls. This was a residence where his girlfriend resided and the phone is listed in her name, and her name is Patricia Diehl.

He had also provided this address and this telephone number at the time of his arrest, and through her
(55) telphone toll records, it disclosed that Steven Riddle had made a phone call on that day to Greg Jack at the Parma, Ohio, number, in Cleveland, Ohio.

Overt act (u) reads, "On or about the 22nd day of May, 1979, defendant Steven Henry Riddle made a telephone call."

And that was from Riddle directly to Sanderson's residence in Daytona Beach, Florida, where, again, Kook resides. So what you've got on the 18th and 22nd is you've got two separate telephone calls, one to Greg Jack in Parma, Ohio, and then he turns around on the 22nd and Riddle calls Sanderson's residence where Russell Kook resides in Daytona Beach, Florida.

There was also a return call that is not mentioned in the overt acts that we deleted. It was a call from Sanderson's residence directly to Riddle on the same day, May 22. We do have a telephone toll record in relation to that telephone call but it is not in your overt acts. But it is on the same day.

You have one of them calling — you've got Riddle calling directly to Sanderson and then Sanderson turned around and called back to Riddle.

(56) Overt act (v) reads, "On or about the 26th day of May, 1979, defendant Steven Henry Riddle made a telephone call.

And then this was the same telephone call from him to Sanderson's residence in Daytona Beach, Florida.

Overt act (w) reads, "On or about the 2nd day of June, 1979, a telephone call was made from Daytona Beach, Florida, to Waco, Texas.

This is another call from Sanderson's residence in Daytona Beach directly to David Seesing's residence in Waco, Texas.

Overt act (x) reads, "On or about the 3rd day of June, 1979, a telephone call was made from Waco, Texas, to Daytona Beach, Florida.

This is a turn-around call from David Seesing to Sanderson's residence, him trying to get hold of Russell Kook in Daytona Beach, Florida, from Waco, Texas.

MR. JAMES: Overt act (y) reads, "On or about the 3rd day of June, 1979, defendant Gregory Louis McCafferty, using the name George T. Markos, rented a Ryder rental truck in Cleveland, Ohio."

(57) This rental was, again, made from Seaway Arco. Mr. McCafferty was using the name George T. Markos in renting the truck from the Seaway Arco. It was an 18-foot truck, a little smaller than he wanted.

He did rent the truck, he did take the truck from the Seaway Arco on that day.

Overt act (z) reads, "On or about the 4th day of June, 1979, defendant Marshall Mechanik, using the name Michael Patrick Flanagan, rented a Ryder rental truck near Spartanburg, South Carolina."

You heard testimony earlier concerning the rental of that truck. According to the testimony, Mr. Flanagan, Mr. Mechanik using the name Mr. Flanagan, came into his service station which was located on Interstate 26, rented the truck and made arrangements to pick it up that evening, or the evening of the 4th.

He did, in fact, come in on the evening of the 4th, early evening, somewhere between 5:00 and 5:30, 6:00 o'clock, and picked up the truck.

MR. RINEHART: Overt act (aa) reads, "On or about the 5th day of June, 1979, phone call was made from Taylorsville, Kentucky, to Cleveland, Ohio."

(58) This, again, is from the phone listed to Pat Diehl, the girlfriend of Steven Riddle, directly to Greg Jack's phone number in Parma, Ohio.

Overt act (bb) reads —

MR. HOFFMAN: Before that, I would like to refer you-all to Count 5 of the indictment. That is on page 11.

The overt acts, the evidence contained in the overt act (bb), which Jerry is about to present, is also the basis for the fifth count of the proposed indictment.

Do you-all see that?

Go ahead, Jerry.

MR. RINEHART: Overt act (bb) reads, "On or about the 4th day of June, 1979, defendant James F. Chadwick received a phone call from near Spartanburg, South Carolina."

As Mr. James just testified, on overt act (z), on June 4, Mechanik in Spartanburg, South Carolina, rented the truck. On that same date, just a few minutes afterwards, he drove approximately four or five miles away from that rental agency, went to a pay phone and called James
(59) Chadwick at his telephone number in Charleston, West Virginia.

Mr. Zarintash, at the time of his arrest, also relted that he had been in Spartanburg, South Carolina, during that period of time, at which time they were shopping for antiques and alleged that that is what he was doing up here in that Ryder truck the night of the arrest.

Also you have Leon Jacques Gast who was making third-party telephone calls, several of them, from the Spartanburg, South Carolina, area at that time to several of the other defendants in this case.

MR. HOFFMAN: Does everybody know what a third-party call is? That is when you pick the telephone up and dial the operator and say, "I'd like to place a call but charge it to another number." That's when you're calling from one number to another number and charging it to a third number.

The third number was the Gast residence in New York.

JUROR: The one he called Chadwick's residence, from Spartanburg, if he called from a pay phone, how did he trace it?

MR. HOFFMAN: It was a collect call.

(60) MR. JAMES: I'd like to add that that phone call was placed from a telephone which was on the same interstate as the place where he rented the truck. It would have been the next exit — in other words, there is the exit, Mr. Clifford's exit, where they are on — I believe it is I-26, where they rented the truck.

If you were to travel up one more exit, four miles up, there is a pay phone at a service area gas station, and that is the pay phone that the call was made from to Jim Chadwick.

MR. RINEHART: So that is where we believe Mechanik probably, in the presence of Gast and Zarintash, stopped, placed the call to Jim Chadwick from that pay phone.

JUROR: Did they call his home?

MR. RINEHART: Called his residence. That is directly from that pay phone to Jim Chadwick's residence in Charleston, West Virginia.

MR. JAMES: Overt act (cc) reads, "On or about the 5th day of June, 1979, in Cleveland, Ohio, defendant Gregory Louis McCafferty, using the name George T. Markos, exchanged the Ryder rental truck which he had
(61) rented on June 3, 1979, for a larger Ryder rental truck."

You will notice in overt act (y) it says that he rented the truck on June 3. We say up here that he rented it on the previous day. The manager of the Seaway Arco and the rental agreement reflected that the vehicle was returned on the 4th.

In other words, Mr. McCafferty rented the vehicle on the 3rd, returned it on the 5th. The rental agreement that he signed shows that it was rented — that it was returned on the 4th. I believe that they were closed one of the days and, in order that he would not be charged for the extra day which he had to hold the truck, the owner of the company just changed the date so he showed that he returned it on the 4th where, in fact, McCafferty came in on the 5th and exchanged the truck for a 22-foot truck.

He had an 18-footer and he exchanged it for a 22-footer on the 5th of June, 1979.

MR. HOFFMAN: Before we go on, would you-all like to take a short break and then go on with this?

(Short recess)

MR. HOFFMAN: All right. Mr. Rinehart and Mr.
(62) James, after our short break, I wonder if you would continue presenting the basis for probable cause with overt act (dd).

Before you do that, I direct the Grand Jury's attention to Counts 9, 10 and 11 of the indictment over on pages 13 and 14 of the proposed indictment.

The factual basis for overt act (dd) is also the basis for those three substantive counts in Counts 9, 10 and 11.

MR. JAMES: Overt act (dd) reads, "On or about the 4th day of June, 1979, defendants Marshall Mechanik,

Shahbaz Shane Zarintash, and Leon Jacques Gast traveled from near Spartanburg, South Carolina, to near Charleston, Kanawha County, West Virginia.

We know that they were in Spartanburg. Agent Rinehart has already explained to you how we know that each of them was in Spartanburg, and we know that they traveled to Charleston where, on the following day, of course, their truck was stopped after the crash.

MR. HOFFMAN: You will recall that Mr. Mechanik
(63) was in Spartanburg and we know that because he rented a truck down there and was later arrested with the truck up here in Montgomery.

Mr. Zarintash, in a statement made to officers at the time of his arrest, stated that he was in Spartanburg. He stated that he had been there for the purpose of looking at some antiques, however, and the defendant Gast we know was in Spartanburg because of the third-party telephone calls billed to his residence in New York, numerous third-party telephone calls billed to his residence in New York, from Spartanburg.

JUROR: Do we know that they traveled together?

MR. HOFFMAN: We don't know they traveled together but we know that they all three did travel because they all ended up here in Charleston.

MR. RINEHART: Overt act (ee) reads, "On or about the 5th day of June, 1979, defendant Steven Henry Riddle made a telephone call."

This was another call from Pat Diehl's listed phone in Kentucky directly to Greg Jack's phone in Parma, Ohio.

(64) MR. HOFFMAN: Before (ff) is presented, I would like to direct your attention to Counts 6, 7 and 8 of the indictment.

The factual basis for overt act (ff) is also the basis for the charge in Counts 6, 7 and 8 of the proposed indictment.

Go ahead.

MR. RINEHART: Overt act (ff) reads, "On or about the 5th day of June, 1979, defendants Craig Bruce McGilvray, Russell Kook, and Gregory Louis McCafferty, traveled from near Cleveland, Ohio, to Ripley, Jackson County, West Virginia."

We know this. You will recall that you had Rebecca Markos, a young lady from Cleveland who dated Greg McCafferty, who testified in reference to his conversation with Craig McGilvray at Sambo's Restaurant in Cleveland, at which time he told her that he had, in fact, traveled with a Ryder truck from the Cleveland area and also someone had driven his pickup truck from the Cleveland area to Charleston, West Virginia, and was here at the time of the plane crash.

(65) On Russell Kook, we have — and I think it can better be explained through the motel receipt at McCoy's Motor Lodge in Ripley, West Virginia, which is a Best Western Motor Lodge directly off of Interstate 77 there at Ripley. We will pass this around for you to look at.

You can see where Russell Kook had registered under the name of Cook — C-o-o-k — but at the time he wrote his name down, he started to write K-o-o-k, which is the correct spelling for his name.

He then decided not to write the K-o-o-k and he wrote his name and registered under C-o-o-k.

MR. HOFFMAN: This is the same Russell Kook we believe that rents the residence in Daytona Beach, Florida, where all the telephone activity is in and out of, by and between the various conspirators and defendants.

MR. RINEHART: Also on the registration slip, it has the street address, 3923 Clare Street, Cleveland, Ohio. Okay?

We, through all of our record-checking, determined that there is not a 3923 Clare Street in Cleveland, Ohio,

but that Russell Kook did, in fact, reside at — I believe it
(66) was 3928 Clare Street, Madison, Wisconsin, which is his address in Wisconsin.

MR. HOFFMAN: Our investigation has determined I believe, has it not, Agent Rinehart, that Mr. Kook maintains residence in Daytona Beach, Florida, and in Madison, Wisconsin.

MR. RINEHART: That's correct. Like I testified before, he has resided at Mr. Sanderson's residence in Daytona Beach, Florida along with Nick Powers, for the past two years.

He also has a residence we determined in Madison, Wisconsin, on this Clare Street address, and we feel that what he did, when he checked into the Best Western Motel in Ripley, West Virginia, that all he did was just deviated just a small amount on the numbers and put Clare Street, Cleveland, Ohio.

MR. HOFFMAN: While I am passing this around, before we begin overt act (gg), I believe, in regard to (ss), Gregory Louis McCafferty made a certain statement upon his arrest in this case, did he not?

MR. RINEHART: That's correct. He had provided information to Mr. James in reference to the fact that he, in fact, had traveled from Cleveland, Ohio, to Charleston,
(6. West Virginia, that day, and was in the Ryder truck which was seized subsequent to the arrest.

(gg) is more or less self-explained by looking at the motel receipt. It states, "On or about the 5th day of June, 1979, defendant Russell Kook, using the name Russell Cook, registered at a motel in Ripley, West Virginia."

As you will look at the motel receipt, you can see how he started to write "K" in place of the "C" and changed it to the C-o-o-k.

Mr. James: Overt act (hh) reads, "On or about the 5th and 6th days of June, 1979, defendants Breck Dana

Anderson, David Thomas Seesing and Jerome Otto Lill traveled on the aforesaid DC-6 aircraft containing approximately ten tons of marihuana from outside the United States, particularly Columbia, South America, to the Kanawha County Airport."

MR. HOFFMAN: Before Randy begins providing the basis for that overt act, I direct your attention to Counts 2, 3 and 4 of the indictment.

The factual basis for this overt act, that is overt act (hh), also provides the basis for the charges in the proposed Counts 2, 3 and 4 of the indictment.

(68) MR. JAMES: As you recall, on the night of the crash, June 6, or thereabout, at 12:56 a.m., Breck Dana Anderson was met by Lt. Perry a short distance from the crash scene. Lt. Perry was providing traffic control at the area of the crash, and Breck Dana Anderson, who had suffered severe injuries, including burns, was met by him and, if you recall Lt. Perry's testimony, Breck Dana Anderson made certain admissions to him concerning the crash.

Mr. Seesing and Mr. Lill — again, as you recall, they were picked up sometime later on the same day, a few hours later, by Deputy Stone, Larry Stone, the Kanawha County Sheriff's Department, again in the vicinity of the airport, a short distance from where the crash occurred. They had sustained severe injuries.

As was explained by Agent Rinehart, at the time of the crash, we found a flight chart which, based on the interpretation of that, the plane flew from a point in Columbia, which was pointed out by Agent Rinehart, on a direct route into the United States, and into Charleston, West Virginia, Kanawha County Airport.

(69) MR. HOFFMAN: On (ii), what is the basis for the overt act there?

Many of the overt acts from this point on are overt acts that you have previously seen and considered. They

are overt acts that were contained in the indictment that you-all considered and returned before arising out of the same circumstances.

So the factual basis for these following overt acts, except for the defendant James Chadwick, will be dealt with very lightly by the agents and very briefly unless you-all have questions about them.

MR. JAMES: As you recall earlier, on the 5th, the evening of the 5th, James Chadwick had been to the airport, traveled from the airport, and later went to the Sheriff's Department where, according to testimony from the sheriff's personnel, he notified personnel on duty that he was expecting a very important phone call on the telphone line which rings into his office, and to make sure that that line was kept open so that there wouldn't be any problem with him receiving this important phone call.

(70) He remained at the Sheriff's Department waiting for the call, and he was present to witness the activities of the people on duty at the Sheriff's Department.

Overt act (jj) reads, "At approximately 12:30 a.m. on the 6th day of June, 1979, defendant Mark Douglas Chadwick traveled to the Eagle Aviation Terminal at the Kanawha County Airport."

Mark Chadwick, in his statement to me, admitted that he traveled to the airport at approximately that time and on that date and went to the vicinity of the Eagle Aviation Terminal, as he put it, to more or less hide —that wasn't the term he used — shamming, as he called it — so that it would appear he was on duty so he wouldn't have to go to work early the next morning was his explanation for his presence up there.

MR. RINEHART: Overt act (kk) reads, "At approximately 12:30 a.m. on the 6th day of June, 1979, defendants Gregory Louis McCafferty, Craig Bruce McGilvray, Russell Kook, Shahbaz Shane Zarintash, Leon Jacques Gast, Marshall Mechanik, Steven Henry Riddle and

(71) unknown others traveled to the General Aviation Area of the Kanawha County Airport in two Ryder rental trucks to meet the aforesaid DC-6 aircraft and receive its contraband cargo."

Going back through how we know that each individual traveled to the general aviation area, Greg McCafferty admitted to Agent James, subsequent to his arrest, that he had traveled in a Ryder truck down there.

Craig Bruce McGilvray admitted that he was there and had driven one of the trucks to the crash site to Rebecca Markos. That was her testimony before you just the other day.

Russell Kook we believe was one of the other individuals who had driven one of the trucks, or a pickup truck, to the general aviation area.

Russell Kook is also the same one who had checked into the Ripley Motel. Shahbaz Shane Zarintash was arrested in one of the trucks that was seen there at the general aviation area later that night in Montgomery, West Virginia.

Leon Jacques Gast was also arrested in that same truck along with Zarintash. Marshall Mechanik ws not only arrested in the truck, but he is the one who had
(72) rented the truck previously.

And this truck was the same truck that was seen there at the general aviation area by Lt. Wiseman from Pinkerton, by Rob Thomas, one of the employees of Eagle Aviation.

MR. HOFFMAN: And Steven Henry Riddle was also arrested?

MR. RINEHART: That's correct. Riddle was arrested inside the truck in the Montgomery, West Virginia, area, subsequent to the plane crash.

Overt act (11) reads, "At approximately 12:40 a.m. on the 6th day of June, 1979, at the Kanawha County

Airport, defendant Mark Douglas Chadwick had a conversation with defendant Shahbaz Shane Zarintash."

This was testimony that you heard directly from Rob Thomas, the employee of Eagle Aviation, who observed Mark Chadwick walk over and talk directly to Shane Zarintash.

It was also information provided to you by Lt. Wiseman who testified that he had also observed Mark Chadwick go over and speak to the individual standing there at the corner of the Aviation Building and conversed
(73) with him at that time, who we later learned or determined was Shahbaz Shane Zarintash.

MR. JAMES: Overt act (mm) reads, "In the early morning hours of the 6th day of June, 1979, at the General Aviation Area of the aforesaid Kanawha County Airport, defendant Shahbaz Shane Zarintash possessed radio equipment for the purpose of communicating from the ground to airborne aircraft.

As you recall from the testimony of the officers, at the time of their arrests, or at the time they were stopped in Montgomery, West Virginia, they were found to be in possession of a Nebco air-to-ground radio, or a Nebco portable radio, which is used primarily for transmission from ground or from any portable unit. It is a portable unit. From actually any location to aircraft or to air traffic controllers

MR. RINEHART: Overt act (nn) reads, "In the early morning hours of the 6th day of June, 1979, at the Kanawha County Airport, defendant Mark Douglas Chadwick possessed a hand-held communication unit."

We know this from information received from Deputy Larry Stone of the Kanawha County Sheriff's Department who observed Deputy Chadwick with the hand-held unit.

(74) You also heard Lt. Wiseman testify that he also observed Deputy Chadwick with the hand-held unit.

Robin Chadwick came in and also testified to the fact that Mark Chadwick had stated to her that he was keeping in touch with them through the hand-held unit and we believe, when he said "with them", that he was talking in the context of the people at the airport, general aviation area.

MR. JAMES: Overt act (oo) reads, "At approximately 12:45 a.m. on the 6th day of June, 1979, defendants Breck Dana Anderson, David Thomas Seesing and Jerome Otto Lill requested the Control Tower at the Kanawha County Airport to provide landing instructions for the aforesaid DC-6 aircraft."

MR. HOFFMAN: We knew all three of them were on the plane. We do not know specifically who requested it, requested the landing instructions. Obviously, only one of them did. It is a common practice in indictments to charge everyone and just prove one.

That is a jury determination.

(75) Go on to (pp).

MR. JAMES: We have a taped recording of the FAA transmission and

MR. HOFFMAN: I believe you-all were aware of this when we presented this before, Go ahead.

MR. JAMES: Overt act (pp) reads, "At approximately 12:53 a.m. on the 6th day of June, 1979, defendants Breck Dana Anderson, David Thomas Seesing and Jerome Otto Lill attempted to land the aforesaid DC-6 aircraft at the Kanawha County Airport."

I don't believe that needs any explanation.

Overt act (qq) reads, "At approximately 1:00 a.m. on the 6th day of June, 1979, defendant James F. Chadwick received a telephone call at the Kanawha County Jail, Charleston, West Virginia."

As you recall, Jim Chadwick asked that that line be kept open, that he was expecting a very important phone call, and just at the time the plane was landing or at the time of the crash we know, from information received from the airport personnel, that he did receive a phone call.

We also know, from employees at the airport, that
(76) Mark Chadwick immediately placed a phone call. At the same time that he received the phone call, Mark Chadwick was placing a phone call from the airport.

MR. HOFFMAN: If you recall, when Agent James told you baout Mark Chadwick's statement, Mark Chadwick admitted that he immediately, after the crash, went into the Eagle Aviation Terminal and placed a telephone call.

He said that he had placed it to the command center at the jail down here, but, strangely enough, all three lines were busy, and that he had never known that to happen before.

We believe, based upon all the attendant circumstances here, that he did, in fact, call his father, because his father did, in fact, get a telephone call right after the crash.

MR. JAMES: Just to reenforce this point, we do have sheriff's personnel who have said that, in fact, the call did come in and that Jim Chadwick did receive the call, did go into his office and did take the call and closed the door and took the telephone call.

(77) MR. RINEHART: You also, along those same lines, have Rob Thomas' statement stating that Mark Chadwick, immediately upon the plane crash, stated that he was calling the command center and went into the Eagle Aviation Center and did, in fact, place a phone call, but he could not overhear the conversation.

MR. HOFFMAN: We know that the personnel at the command center did not receive a telephone call or a

report of the plane crash from Mark Chadwick after the plane crashed.

JUROR: The sheriff's personnel, do they identify Mark's voice over the telephone?

MR. HOFFMAN: They would identify them by the officer reporting, of course.

JUROR: If you work for somebody long enough, after a period of time, you should be able to recognize their voice on the phone. I wondered if he called in and said, "Let me speak to James Chadwick," did they recognize his voice?

MR. HOFFMAN: No. James Chadwick answered the phone from the evidence we have.

MR. JAMES: I believe he was told, "Your call has
(78) come in," or something to that effect, but it was something to the effect, "You have received your call," or something, and he went into his office and took the call.

And about that time, it was being reported through other sources that there had been a plane crash. They were attempting to verify the fact of the crash at that time.

MR. RINEHART: Overt act (rr) reads, "At approximately 1:05 a.m. on the 6th day of June, 1979, defendant Mark Douglas Chadwick advised the defendants and unknown others in the aforesaid Ryder rental trucks that their plane had crashed and that their cargo was all over the hillside."

This, again, was testimony from Rob Thomas, the employee of Eagle Aviation, who was there standing on the other side of the truck when Chadwick got out of his vehicle and went over and conferred with the individuals and instructed them on how to get off the hill.

There was also testimony from Robin Chadwick that Mark Chadwick had told her that he had assisted the individuals and talked to them and assisted them in getting off the hill.

(79) JUROR: Going back to (rr), did anybody have any evidence what James Chadwick did after he got his telephone call?

MR. HOFFMAN: It's in (tt).

MR. RINEHART: Overt act (ss) reads, "At approximately 1:05 a.m. on the 6th day of June, 1979, defendant Mark Douglas Chadwick aided the flight of the defendants and unknown others in the aforesaid Ryder rental trucks from the premises of the Kanawha Countyu Airport."

That relates directly back to (rr) where he had stopped, talked to them, told them in a round-about way, "You'd better hurry up and get off the hill, they'll be setting up a roadblock at the bottom of the hill."

That's exactly when the trucks departed. It was observed by Rob Thomas.

You had Lt. Wiseman at the entranceway of the general aviation area who observed, first of all, a Ryder truck come off the hill and turn down the hill coming out of the airport area. The next vehicle was Mark Chadwick's vehicle who also turned down the hill.

(80) The next vehicle was another Ryder truck who had turned up the hill and went toward the main airport terminal.

So you have Mark Chadwick's vehicle in between the two Ryder trucks. This is what Lt. Wiseman, I believe, had testified to you before. And there was a pickup truck that had also turned down the hill, and we believe this pickup truck to be McGilvray's truck from Cleveland that he had told Rebecca Markos that they had brought down here.

MR. JAMES: Overt act (tt) reads, "At approximately 1:10 a.m. on the 6th day of June, 1979, defendant James F. Chadwick arrived at the scene of the crash of the aforesaid DC-6 aircraft.

As you recall, there was testimony that he arrived at the crash scene and then sometime later went up to the airport to the control tower itself looking for individuals who we have not identified at this time.

Overt act (uu) reads, "At approximately 1:10 a.m. on the 6th day of June, 1979, defendant Mark Douglas Chadwick falsely advised the Kanawha County Sheriff's
(81) Department and its personnel that he was on Greenbrier Street and proceeding to the airport, when, in fact, he was then present at the Kanawha County Airport."

You may recall my reading Mark Douglas Chadwick's statement. He admitted that he did advise the sheriff's department that he was on Greenbrier Street.

MR. HOFFMAN: On overt act (vv), you recall the testimony before from the previous presentment, what happened in that regard.

You will recall that he did not inform — that is, Mark Chadwick did not inform the command center of the presence of the Ryder trucks, that he was up there talking with at the airport and the people he had informed earlier that their cargo was over the hill.

On overt act (ww), you will also recall that he stated that he told the command post that he had observed one Ryder truck containing one white male when it came over the air that there may have been some Ryder trucks involved in that. You-all had previously considered that overt act.

Do you have any questions now with the overt act?

(82) (No response)

MR. HOFFMAN: Let me call your attention to Count 12 of the proposed indictment. That is the only count that is not separately accounted for in overt acts.

That count charges Steven Henry Riddle with traveling for the purpose of carrying on, facilitating the carrying on, of a business enterprise involving marihuana.

It charges him with travel from the State of Kentucky to near Kanawha County or Charleston, Kanawha County, West Virginia.

Agent Rinehart, what is the basis for that 12th count of the proposed indictment?

MR. RINEHART: Subsequent to the arrest of Steven Riddle in Montgomery, West Virginia, and him being transported back to the Kanawha County Jail, he was interviewed by myself and an Assistant United States Attorney at the Kanawha County Jail.

At this time, we advised him of his rights. He signed a waiver of his rights. He stated that he didn't mind talking to us.

We inquired how he had gotten to the rear of the
(83) Ryder truck. Mr. Riddle related to us that on that day, June 5, 1979, he had traveled from the Louisville, Kentucky, area, to Ashland, Kentucky, and had interviewed for a job at Ashland Oil with a Mr. Hedricks.

He said that subsequent to the interview with Mr. Hedricks, he was on his return to Louisville, Kentucky, when he stopped at — I believe it was a Chevron service station — to obtain some gasoline, at which time he met two young females, talked to them, and decided to hitch a ride with them to wherever their destination was, and he didn't recall at that time.

He said he proceeded from the Ashland, Kentucky, area, through Huntington, bypassing Charleston, and ended up at an exit off of 77, and he referred to that exit as Ripple, West Virginia, which we believe to be Ripley, West Virginia.

He said he had dinner there with these two young females at the Best Western Restaurant and decided that he would return to Louisville, Kentucky, area, and, at that time, he left the two females in Ripley, West Virginia, walked out to the interstate, began thumbing from that exit back to the Louisville, Kentucky, area, at

(84) which time he was picked up by these individuals in the Ryder truck.

He said he had got into the back of the Ryder truck after explaining to them to drop him off on Interstate 64 so he could proceed west to Louisville, Kentucky.

He said the next thing he knew, he woke up and was being arrested by the State Police and some other police officers in Montgomery, West Virginia, and had no idea who any of the other individuals were, had never met any of the other individuals and had no idea what they had been up to, knew nothing about the plane crash.

And I think through the telephone records of his calls to several of the other defendants, that explains that he did at least know some of the individuals in the truck.

MR. HOFFMAN: Agent Rinehart, let me direct your attention, if I may, to a residence that we have followed closely in our telephone analysis in Boca Raton, Florida.

Are you familiar with that?

(85) MR. RINEHART: I believe that is the residence of Mr. Felix Willims.

MR. HOFFMAN: That's correct. Through an investigation, have we learned the identity of the occupants of the residence of Felix Williams?

MR. RINEHART: Mr. Williams related to us through a telephone interview that he had rented the residence to a Nikini Noschka, and we have determined that this is the same female or the girlfriend of Shahbaz Shane Zarintash.

MR. HOFFMAN: Do our telephone analyses of the toll calls placed from that phone in Boca Raton, Florida, indicate telephone calls to West Virginia if you recall:

MR. RINEHART: Yes, they do.

MR. HOFFMAN: To whose residence if you recall?

MR. RINEHART: To the residence of James F. Chadwick.

JUROR: Who is the guy in Hollywood, Florida?

MR. HOFFMAN: That was the room, if you recall, that was registered to a Frances Sevoy. We would like to know who he is also.

MR. KING: I think there was a subpoena issued —

(86) MR. HOFFMAN: His home address is Buchanan, New York.

MR. KING: But they haven't been able to serve a subpoena on him. That certainly warrants further investigation. I think you would agree with that.

MR. HOFFMAN: Tim will briefly tell you about the law that you are to apply in deciding whether or not probable cause exists in order to return this indictment against these defendants.

MR. DIPIERO: I will try to be very brief. On most of these, of course, you have already heard of elements from the prior presentment of the original indictment. But I know a couple of you had a couple of questions.

One of you had a question about conspiracy. Very briefly, four elements to the conspiracy law. What is charged in Count 1 is, first, that the conspiracy described in that count was willfully formed nad was existing at or about the time alleged.

Second, that each of the accused willfully became a member of the conspiracy.

Three, that one of the conspirators thereafter knowingly committed at least one of the overt acts charged in the indictment at or about the time and place that is alleged in Count 1.

And, fourth, that such overt acts is knowingly in the furtherance of some object or purpose of the conspiracy as charged.

(87) Of course, these we would have to prove beyond a reasonable doubt at trial and here, the test is probable cause.

Conspiracy Travel Act would involve three essential elements.

MR. KING: You are talking about the 1952 counts.

MR. DIPIERO: Yes. Those are where individuals have traveled from out of state into West Virginia. Those are referred to in the third count, the sixth count, seventh count, eighth count, ninth count, tenth count, eleventh count, and twelfth count.

First, that each defendant at or about the time charged in the indictment traveled in interstate commerce.

(88) Second, that the travel was done with the specific intent to further the unlawful activity involving marihuana and the conspiracy to bring marihunana into West Virginia and the conspiracy to possess it with intent to distribute it.

Third, that the defendant, following such travel in interstate commerce, performed, or attempted to carry out, this particular business enterprise, or this particular conspiracy, as we have charged.

Those are the essential elements. Again, you heard that on a prior occasion.

With respect to 843(b) of Title 21, and that is important with respect to the different counts against Mr. James Chadwick, let me read the statute.

"It shall be unlawful for any person knowingly or intentionally to use any communication facility in committing or in causing or facilitating the commission of any act or acts constituting a felony under any provision of this subchapter, or subchapter two of this chapter.

"Each separate use of a communication facility shall be a separate offense under this subsection."

It goes on to say that a communication facility includes a telephone. It would have to be a knowing and
(89) intentional use of the telephone or communication facility and that use was for committing or in causing or in facilitating the commission of any act or acts constituting a felony.

And we have listed here three separate sections, commission of certain acts — those would be possession with intent to distribute, conspiracy, conspiring to possess with intent to distribute under Section 846, and it also says importation into the customs territory of the United States of a controlled substance.

With respect to the fourth count, the essential elements, again, you hve heard this before, this regards possession with intent to distribute, Title 21, Section 841(a)(1) makes it unlawful for any person knowingly or intentionally to possess with intent to distribute a controlled substance.

Three essential elements: One, that these defendants, Mr. Anderson, Seesing, and Lill, possessed marihuana, which is a controlled substance.

Second, that they did so possess with a specific intent to distribute the marihuana.

And, third, that each of these defendants did so
(90) knowingly and intentionally.

Finally, with respect to — I believe it is the second count — yes — which is the importation of the marihuana into the United States, the essential elements of smuggling marihuana into the United States are knowing importation of marihuana into the United States, intent to defraud, and knowledge that the importation is contrary to the statutes and regulations requiring that all merchandise imported into the United States from another country be declared or presented for inspection at the port of entry.

I think these elements and these statutes were more fully set out the last time we presented the previous indictment that was returned. And this is kind of a refresher course with respect to these various elements in these counts.

Again, the only additional one was the fifth count relating to the phone call to Mr. James Chadwick.

Are there any questions relative to the law or the essential elements which we would be required to prove at trial beyond a resonable doubt?

MR. HOFFMAN: All you must find is that under the law there is probable cause, probable cause that there has been a violation of the law, and that each of the defendants charged has violated the law.

JUROR: What was the basis that the government found to make marihuana illegal?

MR. HOFFMAN: Is this important in your consideration of this case, whether or not there are violations of the law here?

JUROR: No.

MR. HOFFMAN: If it is, we can go into it here, but I am sure that both these guys will be happy to talk with you about it off the record.

If it is important in your consideration of whether or not there has been a violation of the laws of the United States, or there is probable cause to believe that there has been a violation of the laws of the United States, we will be happy to go into it now if you want to.

MR. KING: Controlled drugs are classified in five different schedules. Schedule I is the one that has no known medical value. And the experts with respect to drugs place on Schedule I those drugs that have no known medical value.

(92) Marihuana has been determined pursuant to the law to be in that category and has been placed in Schedule I. So it is a Schedule I controlled substance under the law.

Is that correct, Mr. Rinehart and Mr. James?

MR. RINEHART: That's correct. And also due to the fact that it has a high potential for abuse.

MR. HOFFMAN: We will leave you to your deliberations

(Whereupon, the Grand Jury deliberated and was adjourned)

* * * * *

(93) CERTIFICATE OF COURT REPORTER

I, Rebecca J. Knott, RPR, do hereby certify that this is a true and correct transcript, to the best of my knowledge and belief, as reported by me in Stenotype.

Given under my hand this 3rd day of September, 1979.

REBECCA J. KNOTT, RPR

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States and their agents and the Grand Jury's use at a later time, if necessary. Thank you.

(Trooper Starcher left room)

Whereupon,

JERRY RINEHART and RANDLOPH JAMES were called as witnesses and, after being first duly sworn, were examined and testified as follows:

MR. HOFFMAN: Ladies and gentlemen, the proposed indictment that we have before you today to consider is one that includes several of the defendants in the previous case that you considered involving the crash of a DC-6 cargo plane at Kanawha County Airport on June 6, 1979.

I'd like to go over the indictment for you. It does charge some additional defendants and involves some additional or varied charges with some of the already indicted defendants.

The proposed indictment charges that:

"1. That for an unknown period of time up to and including the 6th day of June, 1979, at Charleston,

Kanawha County, West Virginia, and within the Southern District of West Virginia, and elsewhere, Breck Dana Anderson, David Thomas Seesing, Jerome Otto Lill, Mark Douglas Chadwick, James F. Chadwick, Craig Bruce McGilvray, Russell

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the evidence is in a minute from these agents.

Yes, he was the one that received the telephone call down here at the jail right after the crash.

I wonder, Agent James and Agent Rinehart, if you'll both state your full names for the record, please.

MR. RINEHART: Jerry Allen Rinehart.

MR. JAMES: Randolph D. James.

MR. HOFFMAN: I believe you both have been sworn before commencing this questioning, have you not?

MR. RINEHART: Yes, sir.

MR. JAMES: Yes.

MR. HOFFMAN: And you have both been present during my recitation of the charges

93 RECERTIFICATION OF COURT REPORTS

I, Rebecca J. Knott, RPR, do hereby certify that this transcript, as amended and corrected on pages 8 and 31 herein, is a true and correct transcript, to the best of my knowledge and belief, as reported by me in Stenotype.

Given under my hand this 14th day of March, 1980.

Rebecca J. Knott /sig/